

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 135

THE UNITED STATES, PETITIONER,

vs.

ALFRED W. JONES, RECEIVER FOR GEORGIA &
FLORIDA RAILROAD

No. 198

ALFRED W. JONES, RECEIVER FOR GEORGIA &
FLORIDA RAILROAD, PETITIONER,

vs.

THE UNITED STATES

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI IN No. 135 FILED JULY 1, 1948.

PETITION FOR CERTIORARI IN No. 198 FILED AUGUST 5, 1948.

CERTIORARI GRANTED DECEMBER 6, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

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THE UNITED STATES, PETITIONER

VS.

WILLIAM V. GRIFFIN AND HUGH WILLIAM PURVIS,
RECEIVERS FOR GEORGIA & FLORIDA RAILROAD

No. 198

ALFRED W. JONES, RECEIVER FOR GEORGIA & FLORIDA
RAILROAD, PETITIONER

VS.

THE UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO
THE COURT OF CLAIMS

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No. 45622

WILLIAM V. GRIFFIN, and HUGH WILLIAM PURVIS,
RECEIVERS FOR GEORGIA & FLORIDA RAILROAD

vs.
THE UNITED STATES

History of Proceedings

The original petition was filed February 2, 1942.

On December 28, 1944, on motion made therefor, and allowed by the court, the plaintiff filed its amended petition which is as follows:

Amended Petition

Filed December 28, 1944

(Original Filed February 2, 1942)

*To the Honorable the Chief Justice and
Judges of the Court of Claims:*

I

Your petitioners, William V. Griffin and Hugh William Purvis, are Receivers of Georgia & Florida Railroad, a corporation which was duly incorporated in the State of Georgia on October 4, 1926, and in the State of South Carolina on November 26, 1926, and they were duly appointed and qualified as such receivers under order of the District Court of the United States for the Southern District of Georgia, made on the 19th day of October, 1929, in an equitable cause entitled Virginia Iron, Coal & Coke Company v. Georgia & Florida Railroad, Equity No. 207. A duly authenticated copy of the record of the appointment will be filed simultaneously with this petition.

II

The Railway Mail Pay Act of July 28, 1916 (United States Code, Title 39 Sections 523 to 568, inclusive) provides in forty-six sections comprehensively for the character, means and methods of mail transportation; defines the authority of the Postmaster General; and describes the obligations of the railroads and their right to compensation, which is to be fixed by the Interstate Commerce Commission.

Said Railway Mail Pay Act contains, among other provisions, the following:

"All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith." (39 U.S.C. Sec. 541.)

"The Interstate Commerce Commission is hereby empowered and directed to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight, or space, or both, or otherwise, for ascertaining such rate or compensation, and to publish the same, and orders so made and published shall continue in force and changed by the Commission after due notice and hearings." (39 U.S.C. Sec. 542.)

"For the purpose of determining and fixing rates or compensation hereunder the Commission is authorized to make such classification of carriers as may be just and reasonable and, where just and equitable, fix general rates applicable to all carriers in the same classification." (39 U.S.C. Sec. 549.)

"At the conclusion of the hearing the Commission shall establish by order a fair, reasonable rate or compensation to be received, at such stated times as may be named in the order, for the transportation of mail matter and the services connected therewith, and during the continuance of the order the Postmaster General shall pay the carrier from the appropriation for inland transportation by railroad routes such rate or compensation." (39 U.S.C. Sec. 551.)

Eleven sections of the Act deal with the procedure on hearings before the Commission. No provision is made in said act for a judicial review, but provision is made for administrative review by "re-examination" of an order, as follows:

"Either the Post Master General or any such carrier may at any time after the lapse of six months from the entry of the order assailed apply for a re-examination, and thereupon substantially similar proceedings shall be had with respect to the rate or rates for service covered by said application, provided said

carrier or carriers have an interest therein. (29 U.S.C. 553.)

Section 145 of the Judicial Code (28 U.S.C. Section 250), provides as follows:

"The Court of Claims shall have jurisdiction to hear and determine the following matters:

(1) *Claims against the United States.* First, All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as 'war claims', or to hear and determine other claims which, prior to March 3, 1887, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

III

(1) On the first day of April, 1931, your petitioners filed their application with the Interstate Commerce Commission, designated as "*Railway Mail Pay, In the Matter of the Application of the Georgia & Florida Railroad Company for Increased Rates of Pay*" being a part of No. 9200 on the formal docket of the Commission, alleging that the rates being received for the transportation of the mails were not fair and reasonable, and requesting the Commission to re-examine the facts and circumstances surrounding such transportation and to fix and determine fair and reasonable rates to be received for services rendered on and after said April 1, 1931. A hearing was duly had thereon at which the applicants therein and the Post Office Department were given an opportunity to present evidence and be heard, and did, among other matters and things, present a study which showed the cost to the applicants of transporting the mails, which study was jointly made and agreed to by said applicants and the Post Office Department. After said hearings briefs were filed, the Examiner thereafter submitted a proposed report, and the case was orally argued before Division 5 of the said Commission.

(2) Thereafter, on the 10th day of May, 1933, said Division 5 of the Commission handed down the report of the Commission in said cause (192 I.C.C. 779), and also a certain order was made and entered in that proceeding on the 10th day of May, 1933. Thereafter, on July 6, 1933, said applicants filed their petition for a reconsideration in said cause, and the said Commission on the 3rd day of October, 1933, by its order entered on that date in said cause, denied said petition for reconsideration.

(3) As appears in said report, the Commission found (a) that said joint cost study showed that the deficit in net railway operation income from the transportation of mail by your Petitioners in 1931 was \$4,945.00, (b) that said joint cost study resulted in an approximately accurate ascertainment of the actual cost of service, and (c) that to eliminate said deficit in net railway operating income from the transportation of mail and allow a return of 5.75 per cent upon the total investment in road and equipment allocated and apportioned to mail based upon said cost study would require that the compensation received by your Petitioners for said transportation of mail be increased by 87.46 per cent over the compensation then being received.

(4) The Commission by its order held, contrary to the evidence and contrary to said findings of fact of the Commission, that the rates of pay then and theretofore received by Petitioners from transportation of the mail, which were established in *Railway Mail Pay*, 144 I.C.C. 675, (July 10, 1928) for railroads over 100 miles in length as a class, should continue to be received by petitioners for services rendered on and after April 1, 1931.

(5) Petitioners thereafter, on March 3, 1934, duly filed their petition in the United States District Court for the Augusta Division of the Southern Judicial District of Georgia, in Equity No. 207, seeking to have said order and decree of the Commission of the 10th day of May, 1933, perpetually set aside, suspended and annulled.

(6) At the hearing upon said petition before said Court the entire record before the Interstate Commerce Commission was introduced in evidence, and no additional evidence was presented to said Court. Following said hearing said Court found, among other things, in its opinion and decree filed January 23, 1935, that:

(a) "No other facts were established or sought to be established than those set forth in such order of said Commission, a copy of which is annexed to petitioners' complaint, and it is therefore considered unnecessary and redundant to restate Findings of Fact

as provided by Equity Rule 70¹2. The challenge is to the conclusion drawn from undisputed facts.

(b) "The facts developed in the 'cost study' fully set forth in such order of the Commission were ascertained by the application of rules prescribed by the Commission."

(c) "Such 'cost study' disclosed among other facts that 'There was (1) a deficit in net railway operating income from mail of \$4,945,000 based upon 1931 operations.'"

(d) "It further disclosed that as regards revenue: 'The distribution of expense upon the space ratios shows that the ratio for mail service was 102.79' or that for every dollar applicants received for transporting mails they expended one dollar and 2.79 cents."

(e) "There is no attack upon the efficiency of the operation of this railroad. There is no charge of extravagance."

(f) "The fact that this railroad lost more money on other services rendered by it or that other railroads transported mail under similar, if not identical conditions, at a profit or that this railroad belonged in a certain classification (established by such Commission, known as Class I railroads and that therefore it should be in accord with other railroads of such Class as to compensation as to mail, do not refute or impair the fact that the compensation allowed this railroad for the transportation of mail does not equal the cost of so doing."

(g) "The bald fact remains that this railroad is required in order to escape severe punishment (39 U.S.C.A. Section 563) to transport mail at a compensation fixed by such Commission and that such compensation does not pay the actual cost of service. This compensation is not in compliance with the duty on the United States to pay 'fair and reasonable compensation' and is not 'just and equitable'."

(h) "Said Commission shall take such further action in the premises as the law requires in view of the annulment and setting aside of said order of May 10, 1933. Inasmuch as this court has not the authority to fix the compensation we do not deal with the question of what per cent. of return on the investment, if any, would be required to make the compensation fair and reasonable."

(i) Thereafter the Interstate Commerce Commission, by its order of March 12, 1935, reopened the said proceedings

in said Docket 9200—*Railway Mail Pay, In the Matter of the Application of the Georgia & Florida Railroad Company for Increased Rates of Pay.* A hearing was had on the 24th and 25th days of June, 1935, and at said hearing no new or other cost study was offered or proposed, and no attempt was made by the Post Office Department or Petitioners to dispute the basic facts of said cost study; and no evidence was offered or received in contradiction of the evidence previously taken in the original proceedings. The character of the evidence which was received in this further hearing is described by the Commission in its report and order of February 4, 1936 (214 I.C.C. 66), as follows:

9 "At the further hearing the Post Office Department, hereinafter called the department, put in evidence the detailed rules governing separation of operating expenses between freight service and passenger service in the study of expense for transporting mail on the Georgia & Florida based on a test period of 28 days, September 28 to October 25, 1931. Space and other data included in that study are described in the prior report. No additional tests have been made.

"* * * The methods employed for the initial division between freight and passenger were explained by the department at the further hearing. The department also showed the result of applying the methods to the primary operating accounts for the year 1931. Additional analyses of the data were furnished by the department and the applicant."

"The evidence for the Post Office Department was addressed only to the point that the cost study of 1931 was based on formulas prescribed by the Interstate Commerce Commission, and not upon direct segregation and exact allocation of each separate class of investment and expense; and not only was no attempt made to suggest any other way to allocate the expense, or to contend that, by any other method, the result would have been any different, or would be more advantageous to one side than to another, but, to the contrary, testimony for the Post Office Department was that it was the most accurate method of determining costs that they could devise.

(8) Thereafter, following the filing of briefs and the hearing of oral argument, the Interstate Commerce Commission, on February 4, 1936, rendered its report on further hearing (214 I.C.C. 66), in which it again found that to meet the total railway operating expenses allocated and apportioned to the transportation of mail and to yield a return of

5.75 per cent upon the total mail-service investment of \$457,082 would require an increase of 87.4 per cent in the rates then (February 4, 1936), paid, but nevertheless entered its order of the same date that the rates of pay then and theretofore received by Petitioners for transportation of the mail, which were established in *Railway Mail Pay*, 144 I.C.C. 675 (July 10, 1928) for railroads over 100 miles in length as a class, should continue to be received for services rendered on and after April 1, 1931.

(9) Thereafter, on June 20, 1936, your Petitioners filed a supplemental petition in the United States District Court for the Augusta Division of the Southern Judicial District of Georgia, in Equity No. 207, seeking to perpetually set aside, suspend and annul said order of the Commission of the 4th day of February, 1936. A hearing was had at which was presented the entire record before the said Commission upon the reopening of said proceeding, and at which no other evidence was introduced, and on February 23, 1937, said Court decreed that said order of the Interstate Commerce Commission of February 4, 1936, be set aside and annulled and that said Commission should take such further action in the premises as the law requires in view of the annulment and setting aside of said order.

(10) Thereafter, on April 16, 1937, the United States of America and the Interstate Commerce Commission appealed to the Supreme Court of the United States from said order of the United States District Court for the Augusta Division of the Southern Judicial District of Georgia. Upon said appeal the question of jurisdiction of the specially constituted Three-Judge District Court was for the first time raised, and on December 13, 1937, the Supreme Court indicated that the said specially constituted Three-

11 Judge Court had jurisdiction, but in its decision handed down on February 28, 1938, determined that the remedy provided by the Urgent Deficiencies Act of October 22, 1913, Chapter 32, 38 Stat. 208, 219, 220, was not applicable to said order of the Interstate Commerce Commission. The Supreme Court then went on in said opinion to state:

"If the Commission makes the appropriate finding of reasonable compensation but fails, because of an alleged error of law, to order payment of the full amount which the railroad believes is payable under the finding, the Court of Claims has jurisdiction of an action for the balance, as the claim asserted is one founded upon a law of Congress. *Missouri Pacific R. R. v. United States*, 271 U.S. 603. Compare *United States v. New York Central R. R.* 279 U.S. 73, affirming 65 Ct.

Cls. 115, 121. And since railway mail service is compulsory, the Court of Claims would under the general provisions of the Tucker Act, have jurisdiction also of an action for additional compensation if an order is confiscatory. *United States v. Great Falls Mfg. Co.*, 112 U.S. 645; *North American Transportation and Trading Co. v. United States*, 253 U.S. 330, 333; *Jacobs v. United States*, 290 U.S. 13, 16."

IV

(1) During the entire period from April 1, 1931, to February 28, 1938, your Petitioners have furnished railway mail service to accommodate the United States mails in compliance with requisitions and orders of the Postmaster General. A 15-foot apartment has been furnished upon requisition by the Postmaster General, for which Petitioners have been paid for the entire period from April 1, 1931, to February 28, 1938, at the rate of 14.5 cents per mile. Three-foot closed pouch service has also been furnished upon requisition of the Postmaster General, for which your Petitioners have been paid for the entire period from April 1, 1931 to February 28, 1938 at the rate of 4.5 cents per mile.

(2) During the period from April 1, 1931, to February 28, 1938, your Petitioners received the following amounts for 15-foot apartment service:

\$23,477.34 for the period from April 1, 1931 to December 31, 1931;

\$31,227.47 for the year ended December 31, 1932;

\$31,078.04 for the year ended December 31, 1933;

\$29,518.95 for the year ended December 31, 1934;

\$23,593.98 for the year ended December 31, 1935;

\$23,652.06 for the year ended December 31, 1936;

\$23,509.99 for the year ended December 31, 1937;

\$ 3,790.29 for the period from January 1, 1938 to February 28, 1938.

(3) During said period from April 1, 1931 to February 28, 1938, your Petitioners received the following for 3-foot closed pouch service at the rate of 4.5 cents per mile:

\$2,469.85 for the period from April 1, 1931 to December 31, 1931;

\$3,221.28 for the year ended December 31, 1932;

\$3,206.35 for the year ended December 31, 1933;

\$3,045.30 for the year ended December 31, 1934;

\$2,426.34 for the year ended December 31, 1935;

\$2,454.62 for the year ended December 31, 1936;

\$2,447.16 for the year ended December 31, 1937;

\$ 392.28 for the period from January 1, 1938, to February 28, 1938.

(4) Said Commission in its findings of May 10, 1933, found that for the year ended December 31, 1931, the total operating expenses, railway tax accruals, net equipment and joint facility rents of your Petitioners were \$1,449,801, that the amount of said total expenses apportioned to the carrying of the mail was \$40,673, that Petitioners received \$35,728.00 for the carrying of mails during the calendar year 1931, exclusive of \$979.00 for service in motor cars and that the computed deficit in net railway operating income from mail was \$4,945.00 (192 I.C.C. 779).

(5) The Commission in findings dated May 10, 1933, found that for the year ended December 31, 1931, the total investment in road, exclusive of unrelated items, was \$15,864,462, and that of said amount \$438,803.00 was apportioned to the carrying of the mail.

(6) The Commission in said findings dated May 10, 1933, found that for the year ended December 31, 1931, the total investment of Petitioners in equipment, less depreciation, allocated to passenger-train service was \$135,257.00, and that of this amount \$18,279.00 was allocated and apportioned to the mail service.

(7) The Commission further found in said findings dated May 10, 1933, that for the year ended December 31, 1931, the total investment in road and equipment allocated and apportioned to mail was \$457,082.00, and that a return upon this computed at 5.75 per cent was \$26,282.00, which, added to the indicated deficiency in net railway operating income from mail of \$4,945.00, brings the total claim of Petitioners for increased compensation to \$31,227.00 per year. The Commission further found that to meet this need for increased compensation upon the basis of 1931 operations Petitioners would require an increase in compensation of 87.40 per cent.

14 (8) Upon reopening and rehearing the said Interstate Commerce Commission in its findings of February 4, 1936 found that the Post Office Department's exhibits, with which Petitioners concurred, showed Petitioners' investment in road and equipment allocated and apportioned to mail service was \$457,082.00; that a return of 5.75 per cent on this sum amounted to \$26,282.00, which, with the computed expense, brought the total need for increased compensation to \$31,227.00, to meet which would require an increase of 87.40 per cent in the rates then paid as of February 4, 1936.

(9) Petitioners aver that, on the basis of the aforesaid customary formulas, for the year 1931 they devoted property of a value of \$457,082.00 to the transportation of mail,

and that for the years 1932, 1933, 1934, 1935, 1936, 1937, and for the period ended February 28, 1938, Petitioners devoted property of a value of not less than \$457,082.00 to the transportation of the mails.

410) Petitioners aver that, on the basis of the aforesaid customary formulas, a return of 5.75 per cent upon said minimum value of said property for each of said years is \$26,282.00, that your Petitioners failed in all of said year to earn any return upon the value of said property, and that Petitioners had an operating deficit in the transportation of mail in the total amount of \$3,709.00 for the period from April 1, 1931 to December 31, 1931, and had annual operating deficits in the transportation of mail of not less than \$4,945 during each of the calendar years 1932 to 1937, inclusive, and an operating deficit in the transportation of mail of not less than \$824.00 during the period of January 1, 1938 to February 28, 1938.

15 (11) Petitioners aver that for the period from April 1, 1931, to February 28, 1938, they received \$218,054 from the United States Post Office Department and the United States Government for transportation of the United States mail, and that, on the basis of the aforesaid customary formulas, the amount due Petitioners as compensation for said service is \$392,753.48 which said amount represents an increase at the rate of 87.4 per cent over the amount actually received by Petitioners.

(12) Petitioners aver that for the period from April 1, 1931, to February 28, 1938, they have been paid by the United States Government for transportation of mail at the rate of 14.5 cents per mile for service furnished by Petitioners in 15-foot railway postoffice apartment units, and at the rate of 4.5 cents per mile for service furnished by Petitioners in 3-foot closed pouch units. Petitioners further aver that on the basis of the aforesaid customary formulas, they were entitled to receive from the United States Government from the period from April 1, 1931, to February 28, 1938, compensation at the rate of 27.17 cents per mile for the transportation of the mails in 15-foot railway postoffice apartment units, and at the rate of 8.33 cents per mile for service furnished by Petitioners in 3-foot closed pouch units.

Notwithstanding your Petitioners' claim of rights to increased compensation, the Post Office Department has failed to make payment on said basis at the rate of 27.17 cents per mile and at the rate of 8.33 cents per mile for mail transportation in 15-foot railway postoffice apartment units and in 3-foot closed pouch units, respectively, from and after April 1, 1931.

16

V

Petitioners aver that from April 1, 1931, to February 28, 1938, both dates inclusive, they were required to perform services for and their property was taken for public use by the United States in that under the rules and regulations prescribed by the Postmaster General pursuant to the Act of Congress hereinabove referred to, they were compelled to carry the mail on their said Georgia & Florida Railroad, and were required to use and devote their train, railroad and station facilities and the services of their employees; for such purpose, in consequence whereof and in accordance with said Act of Congress the United States became obligated to pay to your Petitioners fair and reasonable compensation in the amount of \$470,115.63 for said services and property, which fair and reasonable compensation the United States has failed and refused to pay to your petitioners, in lieu thereof paying at least \$252,061.63 less than it should have paid your petitioners as fair and reasonable compensation.

VI

Petitioners aver that the value of the property taken for which the petitioners were entitled to fair and reasonable compensation for the period from April 1, 1931 to February 28, 1938 is the sum of \$470,115.63, whereas they have received from the United States Post Office Department and the United States Government only \$218,054.00, and therefore that the lawful and proper amount due petitioners as compensation for the taking of such service is \$252,061.63.

17

VII

Petitioners aver that no action has been taken on this claim by Congress or by any of the Departments, Boards or Commissions of the United States Government other than above stated; that Petitioners are justly entitled to recover the amount claimed after allowing all just credits and offsets, and that there exists no debt, counterclaim or set-off by which the said claim should be reduced, and no part thereof has been paid; said claim has not been assigned or transferred in whole or in part; that your Petitioners are citizens of the United States and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

WHEREFORE, the premises considered, your Petitioners pray judgment against the United States in the sum of \$252,061.63, together with interest thereon at the rate of

six per cent per annum from the respective times when the pro-rata portions of said amount became due and payable to your petitioners.

MOULTRIE HITT,

Attorney for Petitioners.

237 Woodward Building,

Washington, D. C.

18 *Duly sworn to by Moultrie Hitt; and omitted in printing. (All in italics)*

19 *General Traverse*

Filed February 6, 1945

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

(S) FRANCIS M. SHEA,

Assistant Attorney General.

A. B. R.

D. B. M.

E. E. E.

Argument and submission of case

On March 4, 1947, the case was argued and submitted by Mr. Moultrie Hitt for plaintiff, and by Mr. D. B. MacGuineas for defendant.

21 *Special findings of fact, conclusion of law and opinion of the court by Littleton, J.*

Filed April 5, 1948

Mr. Moultrie Hitt for plaintiffs. Mr. G. Kirby Munson was on the brief.

Mr. D. B. MacGuineas with whom was Mr. Assistant Attorney General John F. Sonnett, for defendant. Mr. Armistead B. Rood was on the brief.

Plaintiffs seek to recover \$252,061.63 under the provisions of the Railway-Mail Pay Act of July 28, 1916 (39 Stat. 412), as the difference between fair and reasonable compensation for carrying the United States mails during the period April 1, 1931 to February 28, 1938, inclusive (\$470,115.63), and the total amount paid by defendant for such period under an order by the Interstate Commerce Commission (\$218,054).

Defendant says, first, that the court does not have jurisdiction of the claim; second, that the court cannot set aside

the rates fixed by the Commission; third, that plaintiffs are barred from maintaining the suit because of acceptance without protest of payments over a long period of time; and fourth, that in any event part of the claim is barred by the statute of limitation.

SPECIAL FINDINGS OF FACT

1. The Georgia & Florida Railroad is a common carrier duly incorporated under the laws of the State of Georgia on October 4, 1926, and under the laws of the State of South Carolina on November 26, 1926. Plaintiffs are the duly appointed receivers for said railroad under the order of the

22 District Court of the United States for the Southern District of Georgia, duly made, given, and entered October 19, 1929, in a proceeding entitled *Virginia Iron, Coal & Coke Company v. Georgia & Florida Railroad*. Promptly after the entry of the order, the receivers duly qualified and ever since have been and still are the receivers for the railroad corporation and have operated and still operate the corporation's railroad and conduct its business.

2. At all times herein mentioned the lines of railroad operated by plaintiffs extended over 400 miles, including the lines of the Statesboro & Northern Railway operated by plaintiffs under lease. During the years here involved, the plaintiffs' revenues from all their lines averaged more than \$1,000,000 and it was classified by the Interstate Commerce Commission on that account as a "Class I Steam Railroad" under a system of classification promulgated by said Commission.

Plaintiffs' railroad was not constructed as a single line, but resulted from the combining of several local short lines, and its general characteristics were the same as those of short lines of 100 miles or less.

During the years and in the manner hereinafter more fully set forth, plaintiffs transported mail matter and rendered services in the transportation of the United States mails under the requirements of Section 5 of the Act of July 28, 1916, ch. 261, 39 Stat. 412, 425-431, often called the Railway Mail Pay Act.

3. For some time prior to operations under said Act, common carriers by railroad transported mail and rendered services in connection therewith under contract and for compensation measured by mileage and weight of the mail matter carried.

Section 5 of the Act provided among other things:

(1) That all railway common carriers are required to transport such mail matter as may be offered by the Post Office Department, in the manner, under the conditions, and

with the services prescribed by the Postmaster General, under penalty of a fine for refusal;

(2) That they shall be entitled to receive "fair and reasonable compensation" for such transportation and for the services connected therewith;

23 (3) That the Postmaster General readjust the compensation to be paid common carriers by railroad as soon as practicable after the 30th of June 1916, upon conditions and at the rates provided in said Act;

(4) That the Postmaster General file with the Interstate Commerce Commission a statement showing the transportation required of all common carriers with all information which might be material to an inquiry for the purpose of fixing rates of compensation for such transportation and service, and

(5) That, as soon as practicable and from time to time, the Interstate Commerce Commission fix and determine fair and reasonable rates of compensation for the transportation of mail matters by railroad carriers and the services connected therewith and prescribe the method or methods by weight, or space, or both, or otherwise, for ascertaining the rate of compensation, with the exception that the Postmaster General is authorized to make special contracts where conditions warrant higher rates than those specified in the Act, and report all such instances to Congress with reasons therefor.

The Post Office Department, the railroads, and the Interstate Commerce Commission use the word "authorize" to designate the requisitioning or ordering of transportation of mail pursuant to the Act, and that term, where used in these findings, will be as such connotation.

4. The Act specifies five classes of service:

Full railway post office car service, which consists of the transportation, handling, distribution (sorting and reassembling), and delivery of mail en route in full 60-foot railway post office cars, usually referred to as R. P. O. cars. These cars are equipped with special facilities to perform such work, which is done by post office employees.

Storage car service, which consists of the transportation of mails in full cars without distribution or other handling en route such as is performed in the R. P. O. cars. Railway employees perform the work incident to this class of service.

24 *Apartment railway post office car service*, which functions substantially the same as the full railway post office car service, except that, instead of an entire car, the railway post office occupies only an apartment 15 or 30 feet long in a combination car and the remainder of the car is available for other uses.

Storage space, which is approximately the same class of service as the storage car service except that it requires only a part of a car instead of an entire car, leaving the remainder of the car available for other uses.

Closed-pouch service, which is the transportation and handling of made-up mails in closed pouches in cars on trains upon which no R. P. O. or apartment cars are in use. The space involved in the closed pouch service is ordered in units of three and of seven feet of car length, extending on both sides of the car with room for passage in the middle.

The classes of service for which claim is made in the case at bar are the *apartment railway post office car service* and *closed-pouch service*.

RATES UNDER THE ORIGINAL RAILWAY MAIL PAY CASE

5. Pending determination of rates by the Interstate Commerce Commission, the Postmaster General, pursuant to said Act and with the consent of the Commission, put the space system of pay into effect on substantially all mail routes, in the manner and at the rates provided in the Act. Thereafter, the Postmaster General filed his statement of information required by the Act, and copies thereof were served upon all common carriers by railroad in the country. Subsequently, the Post Office Department and the railroads agreed upon a test period beginning March 27 and ending April 30, 1917, during which the quantity and carriage of mail upon all mail routes in the country was measured. Under instructions and upon forms prepared jointly by the Post Office Department and a committee selected by the railroads, reports were made by the greater part of the mail-carrying railroads, showing the distribution of space in cars moving in passenger trains, and the revenues derived from the several classes of passenger service, with a division of the cost thereof between passenger train service and freight train service, and with the passenger train service costs subdivided among the passenger, baggage, mail and express services. The reports were checked, reviewed, and corrected, and the basic figures and totals used by both parties in their calculations were brought into harmony. The study of the data and the reduction thereof of tabulation and statements required a period of nearly two years of painstaking work on the part of both the Post Office Department and the railroads. In addition, extended hearings were held at which a large number of statistics and other exhibits were presented and explained. Numerous witnesses, produced

by the Post Office Department and by the railroads, testified with respect to all phases of the operation of mail carriage by railroads and the services in connection therewith.

6. On December 23, 1919, the Commission made its written findings in an extensive report which set out the facts, the Commission's conclusions, and the reasons therefor. Said report and the order of the Commission made pursuant thereto, as published in 38 L. C. C. I. under the caption No. 9200, *Railway Mail Pay*, have been introduced in evidence herein.

In deciding, as directed by the Act, between methods for ascertaining the rate of compensation, the Commission determined that the space basis system inaugurated by the Postmaster General should be continued.

7. In entering upon the ascertainment of the cost of the mail service, there was agreement among the Post Office Department, the railroads, and the Commission as to the methods that should be pursued in allocating and apportioning expenses and property investments as between freight and passenger service. In breaking down the expenses of the passenger service and apportioning the costs respectively allocable to passenger, mail, and express, there was a controversy with respect to cost methods centering chiefly around the question of space properly chargeable against mail services.

8. Under the method adopted by the Commission, with immaterial exceptions, the mail service was charged with the entire car where an entire car was authorized, and the passenger service was similarly charged with entire cars used for passenger service.

Combination and mixed cars generally carried express and baggage, as well as mail, and usually there was space in such cars not covered by mail authorizations or used for either mail, baggage, or express. In considering such space, the Commission determined that compensation for mail should not be confined to the spaces specifically authorized under the space definitions in the Act, but should include a reasonable proportion of the unproductive space necessarily operated in connection with the authorized space. Accordingly, the Commission followed a plan which apportioned the unauthorized, unused, and unoccupied space in a combination or mixed car to mail and to baggage and express in the same ratio as space in the car was used by these services. Because of its peculiar requirements, space authorized for the mail service was considered as space used by it, whether or not such space was all actually used. The spaces and mileages involved were accounted for in car-foot miles.

Some combination cars contained a passenger compartment. In such instances the passenger service was charged with unused space in proportion to the amount of space used for the passenger compartment, when allocating the unused space.

This method of apportioning space, referred to in the Commission's reports as Plan 2, being substantially one of the alternative plans suggested by the Post Office Department, is the most practicable of any suggested; is fair and reasonable, and has remained the basis for the establishment by the Interstate Commerce Commission of rates for the purpose of affording fair and reasonable compensation for the transportation of mail by railway carriers, and is the method followed by the Commission in its second general Railway Mail Pay decision of July 10, 1928, as set forth in findings 11 to 14 herein, and followed by the plaintiff in the case at bar in its independent calculations, as set forth in findings 24 to 30.

9. Application of this method to the consolidated totals of space and mileage reported by 262 Class I and Class II railroads for the 35-day test period mentioned in finding 5, gave the following average percentages for the whole of car-foot miles in each of the classes of service named: that is, passenger (including baggage), 78.06%; express, 13.65%; mail, 8.29%; total, 100%.

Allocating space by application of the above-described method of apportionment, and taking into consideration operating expenses, taxes, equipment and joint facility rentals,

6% interest on investment, and other factors of cost and expense, and applying these percentages to the expense of operation and the investment chargeable to passenger train service, the Commission found certain fair and reasonable rates for the transportation of mail as shown in the Commission's finding hereinafter quoted.

The Commission took into consideration the comparatively greater operating expenses and operating conditions of railroads not exceeding 100 miles in length, and allowed for these differences in their determination of fair and reasonable rates.

10. The report of the Commission stated many facts in detail, but made specific "conclusions," which read in part:

After consideration of all the facts and circumstances of record we are of opinion and find:

1. That the space-basis system inaugurated under authority of the act of July 28, 1916, 39 Stat. 412, 425-431, shall be continued as herein modified and be extend-

ed to all mail routes; and that the Postmaster General shall, on or before March 1, 1920, place on the space basis the routes now paid on the weight basis.

3. That the fair and reasonable rates of payment for transportation of mail matter as of November 1, 1916, and to January 1, 1918, are as follows:

	Cents
For each mile of service by a 60-foot R. P. O. car	27
For each mile of service by a 30-foot apartment car	15
For each mile of service by a 15-foot apartment car	10
For each mile of service by a 60-foot storage car	28
For each mile of service by a 30-foot storage space	15
For each mile of service by a 15-foot storage space	10
For each mile of service by a 7-foot storage space	4
For each mile of service by a 3-foot storage space	2
For each mile of service by a 15-foot closed-pouch space	10
For each mile of service by a 7-foot closed-pouch space	5
For each mile of service by a 3-foot closed-pouch space	3

For separately operated railroads not exceeding 100 miles in length, and not less than 50 miles in length, 20 percent additional to the above rates; and separately operated railroads less than 50 miles in length, 50 percent additional: *Provided*, That the minimum payment on any mail route, over any part of which mail is transported not less than six days a week, shall be \$50 per mile per annum.

28 The fair and reasonable rates on and after January 1, 1918, are 25 percent additional to the rates prescribed as of November 1, 1916.

At the same time the report was made, a formal order was made embodying the matters found and concluded by the Commission, and ordering that the system, rules and ratings, set out therein, be established on or before March 1, 1920, and be observed, maintained, and applied until further order of the Commission.

Such rates were average rates determined from the aggregate amounts of services and costs of all the railroads reporting, and the order did not, except for additional allowances to two classes of short lines, apply the method to the particular circumstances of an individual railroad. Application of the average rates established by the Commission to the circumstances of the respective railroads does not produce the same relation between mail revenue and mail cost for all railroads, but the average rates were found by the Commission to be a fair average for general application.

11. In response to application for re-examination of the rates, the Interstate Commerce Commission reopened the proceedings in the Mail Pay case as to all railroads, except urban and interurban electric lines and some 41 short line railroads in intermountain and Pacific coast territory whose rates of mail pay were dealt with in separate proceedings.

Space data was obtained from a 30-day test period from September 16 to October 20, 1925. Hearings were held, testimony was given, and other evidence was introduced. In its report and findings the Commission reaffirmed as reasonably fair the method adopted in the original proceeding for determining the amount of unoccupied space allocable to each of the services.

12. On July 10, 1928, the Commission made its written findings in a report in which it set out the facts, its conclusions, and the reasons therefor. Said report and the order of the Commission made pursuant thereto, as published in 144 I. C. C. 675 under the caption No. 9200, *Railway Mail Pay*, have been introduced in evidence herein. In said report the Commission stated with respect to the Class I roads, that is, roads with operating revenues of \$1,000,000, or more, per annum:

Giving consideration to all the figures based upon the respective cost studies; to the fact that none of these figures except those in the carrier's exhibits, includes any charge against the passenger-train service for its proportion of the cost of handling nonrevenue freight; giving special weight to the figures based on the plan for the division of train space followed in the original proceeding and subsequent re-examinations; and making allowance for weaknesses of theories and methods, an increase of 15 percent in mail revenues for the carriers as a whole in this group is justified.

13. The report of the Commission stated many facts in detail, but made specific conclusions which read in part:

We find:

1. (a) That the rates of pay for the transportation of mail matter by railway common carriers subject to the act of July 28, 1916, with the exception of the carriers included in subparagraphs (b), (c), and (d) hereof, were not fair and reasonable on and after the dates the carriers filed their applications for re-examination in this proceeding, or, where such applications were not filed, on and after July 24, 1925, the date this proceeding was reopened for re-examination.

(2) That the fair and reasonable compensation to be received by said carriers from said dates to and includ-

ing July 31, 1928, is 15 percent in addition to the compensation paid or accrued at the established rates in effect during said periods except that the fair and reasonable compensation to be received by separately operated railroads not exceeding 100 miles in length, is 80 percent in addition to the compensation paid or accrued at the established rates for such roads, and except, further, that the fair and reasonable compensation to be received by the Woodstock Railway Company and the White River Railroad Company, whose rates of pay were established in *Railway Mail Pay*, No. I. C. C. 43, is 33 $\frac{1}{2}$ percent, in addition to the compensation paid or accrued at the rates in effect for service on their lines during said period.

3. That the fair and reasonable rates of pay to be received on and after August 1, 1928, by the said carriers, except those included in paragraphs 4 and 5 hereof, are as follows:

30'

For each mile of service by

15-foot apartment car

14.50

3-foot closed-pouch space

4.80

5. That the fair and reasonable rates of pay to be received on and after August 1, 1928, by separately operated railroads, not exceeding 100 miles in length, included in the findings in paragraph, numbered 1, hereof, are as follows:

For each mile of service by	(a) Separately operated railroads 50 to 100 miles in length	(a) Separately operated railroads less than 50 miles in length
	Cents	Cents
15-foot apartment car	27.00	34.00
3-foot closed-pouch space	8.00	10.00

New England lines were separately treated in said report and findings, and it was held that they were entitled to the same rate of increase as other Class I carriers, in addition to an increase of approximately 35 percent awarded December 13, 1923. The decision appears in a report published in 85 I. C. C. 157, under the caption No. 9200, *Railway Mail Pay, In the Matter of the Application of the New*

England Lines for Increased Rates of Railway Mail Pay, which report has been introduced in evidence herein.

A group of associated short lines presented separate data relating to the short lines represented by the group. It represented also the Georgia & Florida Railroad whose total mileage exceeded 100 miles and which was a Class I railroad by virtue of its operating revenues. The Commission made no special provision for the Georgia & Florida Railroad in its findings, and did not classify it among the short line railroads. In the application of the order, the Post Office Department included plaintiffs' railroad in the increase of 15 percent.

At the same time it made its report, the Commission made a formal order embodying the matters found and concluded by it, and directed the application of the increased rates.

31 14. Defendant delivered to the Georgia & Florida Railroad new orders, or "authorizations," effective as of August 1, 1928, for the transportation of mail on said railroad with the rates therein stated on the basis of the increase for railroads exceeding 100 miles in length, under the order of the Commission made July 10, 1928. Plaintiff transported the mail as required by said authorizations in 15-foot apartments in combination cars and 3-foot closed-pouch units, periodically submitted statements showing the services rendered, computing the amounts due at the rates fixed for railroads exceeding 100 miles in length, under said order of July 10, 1928, and received payments therefor on said basis. Plaintiffs accepted these payments without protest or formal complaint until they made application to the Interstate Commerce Commission on April 1, 1931, for a re-examination of the rates.

PROCEEDINGS ON PLAINTIFFS' APPLICATION FOR RE-EXAMINATION OF RATES

15. On April 1, 1931, plaintiffs filed a petition with the Interstate Commerce Commission alleging that the rates paid it for the transportation of mail were not fair and reasonable, and requesting that the Commission re-examine the particular facts and circumstances surrounding such transportation over plaintiffs' railroad and fix and determine reasonable rates to be paid plaintiffs for service rendered on and after that date. The Commission ordered such a re-examination, and a test period of 28 days, from September 28 to October 25, 1931, for the purpose of obtaining space and other data, was selected by the plaintiffs and the Post Office Department. In this period the space operated in all passenger trains was recorded, showing the amount used for passenger service, including baggage and miscel-

lancons, for express, and for mail. The units of service furnished by plaintiffs during the period were (1) 15 foot railway post office apartment units, and (2) 3 foot closed pouch service units.

16. On May 10, 1933, the Commission made its written findings in a report which is published in 192 I. C. C. 779, under the caption *Railway Mail Pay, in the Matter of the Application of Georgia & Florida Railroad Company for Increased Rates of Pay*, a copy of which has been introduced in evidence herein.

Said findings read in part:

Throughout the test period 3,045,704 car-foot miles were operated in passenger-train service for passenger proper, baggage, miscellaneous express, and mail. This total includes all passenger-train cars, passenger coaches, sleeping and dining cars, and combination and mixed-traffic cars, except motor cars. The distribution of the total among the several services is made in accordance with the plan used in prior cases. The method is described in *Railway Mail Pay, supra*. In this plan, referred to here and in the prior proceeding as plan 2, car-miles and car-foot miles of operation in cars employed exclusively for one service are referred to as full cars, whether loaded or not, and the entire operation of each is allocated to the service to which it is assigned. The space in combination and mixed cars is allocated to each service according to the space used, except that space authorized for mail is regarded as space used. The unused space in such cars is apportioned in proportion to the space used.

The space ratios are applied to the expenses. The ratios of expense so derived are used to apportion investment in road and equipment, except items directly allocated. The direct allocations are relatively small.

For the year ended December 31, 1931, the total operating expenses, railway tax accruals, net equipment and joint-facility rents were \$1,449,801. Of this amount 21.74 percent, or \$315,273 was apportioned to passenger train service in accordance with the formulas prescribed for Class 1 roads for the separation of expenses between freight and passenger services. Certain expenses were directly allocated to passenger traffic. The remainder was apportioned upon the space ratios as adjusted by the department. The total apportioned to mail was \$40,673. The computed deficit in net railway operating income from mail was \$1,945.

The total investment in road, excluding unrelated items, was \$15,864,462. Of this, 21.44 percent, or \$3,401,578, was apportioned by the department to passenger-train service. The part of the latter amount apportioned to mail upon the adjusted space ratio was \$438,803. The total investment in equipment, less depreciation, allocated to the passenger-train service was \$135,257, approximately 10 percent of the total. Of this amount, \$18,279 was allocated and apportioned to the mail service. The total investment in road and equipment allocated and apportioned to mail was \$457,082. A return upon this computed at 5.75 percent is \$26,282 which, added to the indicated deficiency in net railway operating income from mail of \$4,945, brings the total claim of the carrier for increased compensation to \$31,227. To meet it upon the basis of 1931 operations would require an increase in compensation of 87.40 percent.

The department opposes any increases upon the principal ground that the present rates were established as reasonable for all carriers based upon an examination of the service as a whole. The applicant, however, under the railway mail-pay statute is entitled to show, if it can, upon reexamination that in so far as it is concerned the rates so established are not fair and reasonable. In determining that issue we must take into consideration all factors that have a bearing upon it.

An examination of the data shows that of the three services included in passenger-train service as a whole the mail service makes the best showing with respect to revenue.

As shown before, the actual use of the units (3-foot pouch service) was considerably below the maximum capacity. The use of authorized space for mail in the space study instead of space actually occupied resulted in a somewhat higher space ratio and the apportionment of greater expense to the mail.

The 15-foot apartment unit earned by far the greater portion of the revenue.

Applicant bases its claim for higher rates upon the space data of the test period and their application in a cost study; and also upon the fact that, because of its low traffic density and low earnings per mile of road,

it is not comparable with many class I roads which receive the same rates of pay.

34. The cost study is not considered to be an accurate ascertainment of the actual cost of service. It is an approximation to be given such weight as seems proper in view of all the circumstances. See *Railway Mail Pay, supra*. The comparison of mail revenue with other revenue received for services in passenger-train operations shows that mail with relation to the other services is bearing its fair share of the expenses of operation and is contributing relatively more than the other services for the space furnished. Applicant receives the same rates as those received by other roads for the same kind of service. Many of these other roads are, as applicant points out, roads which are very much larger and which have greater traffic and lower unit operating costs. On the other hand many are in much the same situation as the applicant in respect of passenger-train operations. The data submitted fail to justify giving the applicant rates higher than those now paid other railway common carriers for like service.

We find that the rates of pay now received by applicant for the transportation of mail, established in *Railway Mail Pay*, 144 I. C. C. 675, for railroads over 100 miles in length, are fair and reasonable. The application for increased compensation is denied.

At the same time that it made its report, the Commission made a formal order in accordance with the report.

Plaintiffs petitioned the Interstate Commerce Commission to reconsider said order, which petition was denied October 3, 1933.

17. On March 3, 1934, plaintiffs commenced an action in the United States District Court, Southern District of Georgia, Augusta Division, entitled *W. V. Griffin and H. W. Purvis, Receivers for the Georgia & Florida Railroad, petitioners, v. United States of America and Interstate Commerce Commission, defendants*, Equity No. 207, in which plaintiffs asked for a decree declaring that the order of the Interstate Commerce Commission of May 10, 1933, be declared void; that it be set aside and annulled, and that the court direct the Commission to reopen and reconsider plaintiffs' application for determination of rates for transportation of mail. On January 23, 1935, the court duly made and entered its decree which reads in part:

It is therefore ordered and decreed:

(1) That said order of the Interstate Commerce Commission of May 10, 1933, is and has at all times been

unlawful and that said order be set aside and annulled.

(2). Said Commission shall take such further action in the premises as the law requires in view of the annulment and setting aside of the said order of May 10, 1933.

Inasmuch as this court has not the authority to fix the compensation we do not deal with the question of what percent of return on the investment, if any, would be required to make the compensation fair and reasonable.

18. Pursuant to the decree, on March 12, 1935, the Interstate Commerce Commission made an order reopening said proceeding. Further hearings were had, and on February 4, 1936, the Commission made its report which is published in 24 I. C. C. 66, under the caption No. 9200, *Railway Mail Pay, In the Matter of the Application of Georgia & Florida Railroad for Increased Rates of Pay*, a copy of which has been introduced in evidence herein. Said report concludes:

The matters disclosed in the original hearing upon this application, and considered by division 5 in its prior report, have been carefully considered by us in this reopened proceedings. We have had the benefit of additional testimony in respect of the conditions under which the authorized 45-foot railway postoffice apartment is furnished, of a more comprehensive analysis by the department of the underlying data upon which the space and cost studies were made, and of a more detailed examination of the space data, the revenues per car-foot mile and expenses per car-foot mile as related to passenger-train operations, as a whole and to each of the three services rendered in that operation.

Giving consideration to all the computations, the extent and cause of the operation of a substantial portion of the unused space, the fact that a theoretical cost and not actual cost is derived from the methods and plans adopted and the small amount of mail carried in the authorized units of service, we find upon this augmented record that the present rates for transportation of the mail by the applicant are fair and reasonable.

A formal order was made by the Commission at the same time, which reads in part:

It is ordered, That the rates of pay for the transportation of mail matter established in Railway Mail Pay, 144 I. C. C. 675, for railroads over 100 miles in length be, and they are hereby, established as fair and reasonable rates to be received by the applicant here-in for services rendered on and after April 1, 1934.

19. Plaintiffs filed a supplemental petition in the proceedings in the United States District Court, Southern District of Georgia, complaining of the action of the Commission in its order of February 4, 1936, and on February 23, 1937, the said District Court ordered and decreed (1) that the order of the Interstate Commerce Commission of February 4, 1936, was unlawful and that it should be set aside and annulled, and (2) that in view of the annulment of the order of February 4, 1936, the Commission take such further action as the law requires.

20. The Interstate Commerce Commission prosecuted an appeal from said decree to the Supreme Court, and on February 28, 1938, the Supreme Court decided that the jurisdiction of the three-judge District Court did not apply to the order of the Interstate Commerce Commission made February 4, 1936, in which said Commission declined to raise the rate. The decree was reversed with direction to the District Court to dismiss the bill. The decision is reported as *United States et al. v. Griffin et al., Receivers*, 303 U. S. 226. The court stated in its opinion (1) that if the Commission makes the appropriate findings of reasonable compensation, but fails because of alleged error of law to order payment of the full amount the railroad believes is payable under the finding, the Court of Claims has jurisdiction of an action for the balance, as the claim asserted is one founded upon a law of Congress, and (2) since railway mail service is compulsory, the Court of Claims would, under the general provisions of the Tucker Act, have jurisdiction of an action for additional compensation if the order is confiscatory. Plaintiff introduced the evidence supporting findings 15 to 23 under the first of these theories, and evidence supporting findings 24 to 30 under the second theory.

21. During the period involved herein, the following types of services were performed for defendant upon orders from defendant:

R. P. O. apartment car service. A 15-foot apartment is the minimum unit authorized for this type of service. It occupies one-fourth of the length of a 60-foot standard baggage car, partitioned from the remainder and supplied with fittings for a railway post office to enable a postal clerk employed by the Post Office Department to open pouches or packets and sort and reassemble mail matter en route for delivery at stations along the route. The plaintiffs had acquired and operated some cars with a 30-foot R. P. O. apartment, which at various times were furnished to the Post Office Department when a 15-foot space was ordered. In such event the postal clerks used only 15

feet of the 30-foot apartment, leaving the remainder unused, and the plaintiffs were paid on the basis of the rate for a 15-foot R. P. O. apartment.

• *Closed-pouch service.* Three feet of the length of the car was the minimum unit authorized for this type of service. Such space is used to store closed mail pouches being transported in a regular baggage car on a regularly scheduled train. The bags are handled by railroad employees and the railroad is responsible for their delivery. The 3-foot unit, if utilized to capacity, would be stacked with mail bags to the top of the car, leaving an aisle in the center. The unit is not, however, physically divided from the remainder of the available space and, generally, the mail bags are not stacked within a specified space, but are carried in whatever space may be convenient for handling. In such case, the 3-foot unit of service is measured by the number of mail pouches which could be stored feasibly in a 3-foot section as above described, which by actual tests averaged from 50 to 56. The number of pouches normally carried was less than the number comprising this minimum unit of space, but the pay was for the minimum of 3 feet.

During the period involved herein the plaintiffs transported mail for defendant on that part of their main line extending between Augusta, Georgia, and Madison, Florida, and on four of its branches.

22. After rendering services ordered by the Post Office Department, plaintiffs periodically submitted vouchers, known as "affidavits of service," to defendant claiming compensation. These vouchers showed the routes, trips, computed mileage, rates per mile, and the amounts claimed, all in accordance with the orders for service issued by the Post Office Department and at the rates fixed by the Interstate Commerce Commission. Plaintiffs were paid for the period here involved at the rates established for carriers with lines over 100 miles long by the order of the Interstate Commerce Commission dated July 10, 1928, in the second general *Railway Mail Pay* case, namely 14.5 cents per mile

for 15-foot R. P. O. apartment service, and 4.5 cents per mile for 3-foot closed-pouch service. Certain established minimum yearly rates as well as rates for transportation by truck for emergency substitute service were paid. The payments to plaintiffs for the years here involved, not including side or transfer services at terminals which were not covered by fixed rates, are shown in the table in finding 23.

23. On the basis of the joint cost study for the test period as adjusted for the entire year of 1931, the Interstate Commerce Commission's report of May 10, 1933, found that an

increase of 87.4% would be necessary to overcome the deficiency in net railway operating income under established rates and to provide a return on investment allocable to mail service at the rate of 5.75% per annum, if the method adopted by the Commission in the original and the second general *Railway Mail Pay* case as the proper method for determining an average rate for all railroads was applied to the particular circumstances of plaintiff's railroad operations.

The yearly amounts of pay actually received by plaintiffs for transportation of mail during the period here involved and the amounts of such an 87.4% increase are shown in the following table:

	Mail revenue received in years	87.4% of annual receipts
1931 from April 1st.....	\$26,812.14	\$23,453.81
1932.....	35,087.74	30,666.08
1933.....	34,920.09	30,520.76
1934.....	33,176.25	28,996.04
1935.....	26,632.32	23,276.05
1936.....	26,721.97	23,355.00
1937.....	26,068.10	22,783.52
1938 to February 28.....	4,205.03	3,675.20
Totals.....	213,623.64	186,702.06

COMPENSATION BASED ON COSTS AS NOW COMPUTED BY PLAINTIFFS

24. The increase of 87.4%, which was the basis of the foregoing table, is predicated on the space basis method adopted by the Commission in the prior mail pay cases applied to data secured from the test period in 1931 and to cost data then available, and the rate was then applied to the amounts of mail service actually furnished for the years here involved.

25. Since that time other data on costs for each of the years have become available, and still using the space basis method established by the Commission, plaintiffs have introduced evidence as to cost of mail service for such years based upon year-by-year operating expenses and investment, together with data on the actual amounts of mail carried.

Such evidence first separates the operating expenses and investments chargeable to passenger train service from those chargeable to freight service, in accordance with formulae prescribed by the Interstate Commerce Commission and used by it for establishing mail pay rates, with all expenses directly or naturally assignable to each service being so assigned to the fullest extent possible, and those

not susceptible of direct assignment being apportioned under formulae established by the Interstate Commerce Commission.

Computed as stated above, the operating expenses of plaintiffs' passenger train service for the period here involved, with expense for the fractional years 1931 and 1938 determined by the ratios of the period involved to the entire years, were as follows:

1931 Apr. 1 to Dec. 31	\$233,954
1932 Entire year	277,291
1933 Entire year	253,146
1934 Entire year	248,729
1935 Entire year	217,000
1936 Entire year	232,292
1937 Entire year	254,532
1938 Jan. 1 to Feb. 28	38,752

\$1,706,186

25. In lieu of profits or other compensation above operating costs of mail traffic, the Interstate Commerce Commission adopted a general policy of allowing a percentage of the investment as a factor in determining mail pay rates. In the original *Railway Mail Pay* case of December 23, 1919, the Commission used the rate of 6%; in the second general *Railway Mail Pay* determination of July 10, 1928, the Commission used the rate of 5.75%. The rate of 5.75% was used also in the report of the Commission on May 10, 1933, on plaintiffs' application for a re-examination of rates. Defendant did not introduce any evidence with reference to the reasonableness or fairness of the use of 5.75% on investments chargeable to mail service.

Allocated on the basis of methods prescribed by the Commission, in the first and second general *Railway Mail Pay* cases, the total investments allocated to plaintiffs' passenger train service, represented by net year-end values for the years 1931 to 1937, inclusive, and a 5.75% allowance therefor adjusted for the fractional years 1931 and 1938, are shown in the table following. The amount for 1938 is based on 1937 year-end investments.

Years	Year-end Values of Investments	5.75 percent of year-end values
1931 Apr.-Dec.	\$1,368,085	\$58,986.67
1932	1,366,663	78,583.12
1933	1,305,810	75,084.08
1934	1,284,820	73,877.15
1935	1,034,999	59,512.44
1936	1,034,147	59,463.45
1937	1,127,681	64,841.66
1938 Jan.-Feb.		10,800.91

26. In computing the percentage of the total car-foot miles of passenger train service allocable to the passenger service, baggage and express, and mail, respectively, plaintiffs' evidence omitted from its calculations the car-foot mileage of portions of certain lines which carried passenger, baggage and express, but did not carry mail. Such omissions had the effect of decreasing the percentage allocable to passenger, baggage, and express, and of increasing the percentage allocable to mail. Since the operating expense and amounts of investment of passenger train service were computed on the basis of total car-foot mileage for all lines, an improper ratio is obtained through the computation of space from percentages which do not include certain mileages. In the following table adjustments have been made to include these mileages.

Under the method of allocation established by the Commission in the *Railway Mail Increases*, and with these corrections, the space necessarily provided for the mail service in relation to the total space operated by plaintiffs in passenger trains for the period here involved, is as follows:

	Percent		Percent
1931.....	22.62	1935.....	19.25
1932.....	27.07	1936.....	17.21
1933.....	23.61	1937.....	18.55
1934.....	48.25	1938, Jan. 1-Feb. 28.....	23.85

27. By applying the percentage of train space allocable to the mail service (finding 26) to the passenger train operating expenses (finding 24) and to the 5.75% allowance on investment (finding 25), the compensation for mail service rendered by plaintiffs during the period here involved, as computed from the space basis method, would be as follows:

Year	Pro rata share of operating expenses	Allowance on investment at 5.75%	Total compensation	Excess of compensation due over actual receipts
1931.....	\$52,920.39	\$13,345.50	\$66,265.89	\$39,453.75
1932.....	64,210.31	21,272.48	85,482.79	50,305.17
1933.....	55,045.77	17,727.35	72,773.12	37,853.03
1934.....	45,393.04	13,482.58	58,875.62	28,099.37
1935.....	41,899.55	11,456.14	53,355.69	26,723.37
1936.....	41,694.79	10,433.66	52,128.45	25,196.38
1937.....	47,215.69	14,030.47	61,246.16	32,178.00
1938, Jan. 1-Feb. 28.....	9,242.35	2,577.46	11,819.81	7,614.78
Totals.....	\$357,611.79	\$101,125.61	\$458,737.40	\$245,113.76

25. The method of allocating space applied in plaintiffs' computation follows that prescribed by the Interstate Commerce Commission in the *Railway Mail Pay* cases, except that with the actual data for the single railroad available, the method has been applied with greater refinement of detail in the allocation of space to the separate service.

This refinement was the determination of space ratios of the passenger, baggage and express, and mail services for each of plaintiffs' different lines and railroad divisions separately. This will be referred to for convenience as the "separate line basis."

A substantially different result will be reached if the used space for each class of service is consolidated for the entire railroad, the totals of unused space similarly consolidated, and the total unused space allocated to the different classes of services on the ratio of the consolidated totals of used space. Such a method will be referred to as the "entire system basis." Defendant contends that the latter is

42 more in keeping with the space basis method established by the Interstate Commerce Commission in the *Railway Mail Pay* cases, since the totals for large numbers of lines reporting were consolidated in those cases, before computing therefrom the average space ratios which formed the basis of the average rates there established.

If the space ratios are computed on the "entire system basis," that is, from the consolidated totals of used space in the combination and mixed cars, in ratio with consolidated totals of unused space in such cars, the following ratios of operating expenses and allowances on investment, and the following amounts of compensation would be obtained:

Mail ratios applicable to the operating expenses and allowance on investments in findings 24 and 25.		Compensation due under entire system method	Excess of compensation due over actual receipts
1931, Apr.-Dec.	19.81%	\$58,033.93	\$31,221.79
1932	22.05%	69,630.40	34,542.66
1933	19.61%	60,443.92	25,523.83
1934	16.66%	53,746.18	20,569.93
1935	16.91%	46,869.86	20,237.54
1936	15.64%	47,182.04	20,460.07
1937	16.59%	52,091.85	26,023.75
1938, Jan.-Feb.	19.94%	9,882.05	5,077.02
Totals		\$397,880.23	\$184,256.59

The \$184,256.59 excess of compensation due under "entire system method" over actual receipts, would offset an operating deficit of \$96,825.93 under existing rates, and would pay \$87,430.66 as return on investment computed at 5.75%.

29. The difference between the results obtained in using the "separate line basis" from those obtained in using the "entire system basis" is due to the fact that on the "separate line basis" the services on each line bear their shares of unused space on that line in proportion to the space used by each service.

On the "entire system basis," unused space in combination or mixed cars is equalized and applied to used space in mixed and combination cars over all the lines. As a result, unused space in a mixed or combination car on one line may be allocated to a service not being performed in the combination car on that line. There were passenger compartments in the combination cars on the branch lines, but no passenger compartments in the combination cars on the main line. By combining the totals under the "entire system basis," some of the unused space on the main line, where there were no passenger compartments in the combination cars, was allocated to the passenger service by reason of being combined with the branch lines where there were passenger compartments in the combination cars.

30. On the branch line between Augusta and Tennille, Georgia, a 15-foot railway mail apartment was authorized for round-trip service only six days per week. The passenger and mail services on this division were discontinued October 15, 1934. In plaintiff's evidence on costs, mail space used on this line was computed on a seven-day-per-week basis. Because no other car was available to provide for the other regularly operated services performed in the combination car, the car containing the mail apartment had to be operated on Sundays, and on the assumption that mail service should be charged with the space provided in the R. P. O. apartment on Sundays which could not be used for other services, plaintiffs included the 7th day in their computations.

If the space for this day were deducted from the used mail space and added to the unused space and allocated under the "separate line system," the following results would be obtained:

Mail ratios applicable to operating expenses and allowance on investment at 5.75%		Total compensation payable	Excess of compensation payable over actual receipts
1931 Apr-Dec	22.23%	\$65,064.08	\$38,991.64
1932	26.68%	84,251.21	49,163.47
1933	23.31%	718,484.43	36,928.34
1934	17.98%	58,004.58	24,828.33
1935	19.25%	53,355.09	26,723.37
1936	17.21%	51,918.35	25,196.38
1937	18.55%	58,234.16	32,178.06
1938 Jan-Feb	23.85%	11,819.81	7,614.78
Totals		\$454,538.31	\$240,744.67

If the same readjustment were made, but the unused space allocated on the "entire system basis," the results would be as follows:

Mail ratios applicable to operating expenses and allowance on investments at 5.75%		Total compensation payable	Excess of compensation payable over actual receipts
1931 Apr-Dec	19.32%	\$56,598.45	\$29,786.31
1932	21.56%	68,083.06	32,995.32
1933	19.24%	59,272.65	24,352.56
1934	16.32%	52,649.32	19,473.07
1935	16.91%	46,869.86	20,237.54
1936	15.64%	47,182.04	20,460.07
1937	16.59%	52,091.85	26,023.75
1938 Jan-Feb	19.94%	9,882.05	5,677.02
Totals		\$392,629.28	\$179,005.64

There is no evidence which indicates that plaintiffs' operating costs were excessive in relation to the character of the road and the traffic area or that such costs were increased by inefficiency, negligence, or uneconomical management or operation by the plaintiffs.

OUT-OF-POCKET COSTS

31. Defendant contends that in an action to recover additional compensation upon the ground that an order of the Interstate Commerce Commission fixing a rate for mail pay is confiscatory, the amount of compensation should be based on "out-of-pocket" costs. Out-of-pocket costs are those which can be assigned directly to a particular traffic, and are sometimes called added costs. Stated in another way, they are those costs which would have been saved if the particular traffic had not been handled. Such a system of out-of-pocket costs has never been applied by the Interstate Commerce Commission in the determination of

mail pay rates, but it has been considered by the Commission in some cases where a railroad applied for permission to abandon a segment of a line theretofore in operation.

Defendant's accounting and engineering evidence as to out-of-pocket costs first distinguishes between "variable" and "constant" costs. Variable costs are those which fluctuate, more or less, according to the volume of traffic handled. They are considered under this method as having been influenced by change in the volume of traffic, and where they cannot be directly assigned to a given traffic they are apportioned on a basis of car miles. Constant costs are those which are considered not to have been influenced by change in the volume of traffic, but to have remained relatively unchanged, whether traffic increases or decreases. Being constant, they are eliminated from the computation of out-of-pocket costs for the mail traffic here involved.

When costs cannot be assigned exclusively to either of the constant or variable classifications, they are apportioned between them. For example, defendant's evidence is to the effect that only 44% of the expense of maintenance of way and structures, one of the largest divisions of yearly expense, is constant; similarly, 90% of the expenses of shop machinery in maintenance of equipment is constant, and 50% of the pay of station employees is constant. In like manner, other costs are apportioned between constant and variable.

But not all of the variable costs are considered to be out-of-pocket costs. On the ground that locomotive use is much harder on the roadway than is that of the trailing load, and that the use of the locomotive is more or less of a constant nature, one-half of the variable portion of the expense of maintenance of way and structures has been apportioned directly to locomotives and eliminated from consideration as an out-of-pocket expense of R. P. O. apartment cars. Certain other accounts involving locomotives are similarly treated. The result of the method is demonstrated by the maintenance of way and structures expense for the year 1923 as follows:

Total expense	\$202,027.00
Out-of-pocket portion, 56%	113,135.00
Reduced because of amt. attributed to locomotives, 50%	56,567.50
Allocable to R. P. O. cars in trailing load (3.093% of all car miles)	1,740.50

The R. P. O. car ratio applied to the above account and in most other instances was based on the total car mileages of all cars in the trailing load. In its application to the out-of-pocket portion of many variable costs, however, the R. P. O.

ratio for 1933 was reduced to 2.506% by including the locomotive in computing the total number of cars and by assigning it a value of two cars. The R. P. O. ratio varies slightly year by year, as it is based on actual car mileages.

Defendant's evidence eliminates the closed-pouch service entirely from its conclusions for the reason that no additional car was required for such service, and handling charges were insignificant.

33. While the evidence tends to show that plaintiffs' trains would have had to carry the cars which contained the R. P. O. apartments, even if mail had not been transported, for the purpose of demonstration, but without admitting it as a fact, defendant's evidence proceeds on the assumption that the car containing the R. P. O. apartment could have been omitted from the trains if it had not been required for mail service.

By employing the method described in findings 31 and 32 and assuming that the R. P. O. cars could have been eliminated if mail had not been transported, defendant's evidence tends to show that for the period here involved the out-of-pocket expense of the R. P. O. apartment car service was \$63,477, or approximately 33.42% of the revenue actually received for R. P. O. car service.

Since the closed-pouch service was furnished in cars which would have had to be hauled in any event, the method of out-of-pocket cost calculation above described would show only a negligible amount. For the same reason, if it be assumed that no combination car could be eliminated, even if the mail service were discontinued, out-of-pocket costs would be negligible.

The out-of-pocket cost method takes no account of investment and contemplates no allowance of return thereon.

COMPETING RAILROADS

34. Measured by car-foot miles, space furnished for railway post office apartment service was approximately 93% of the total space furnished by plaintiffs for transporting mail during the period involved.

R. P. O. apartment car service could be supplied only by railroad, and the Georgia & Florida Railroad was the only railroad which could furnish R. P. O. apartment car service between the points for which such service was required of plaintiffs by defendant during the period here involved. The evidence shows that lines of certain other railroads operating in the southeastern states crossed the line of the Georgia & Florida Railroad and discharged and received mail traffic at such points of passage from R. P. O. cars or apartments, and that such railroads furnish

ed such services at rates not exceeding those fixed by the Interstate Commerce Commission in the second general *Railway Mail Pay* decision of July 24, 1928. The cost to such railroads for rendering such services is not shown by the evidence. Such railroads will not supply, singly or in combination, reasonably similar R. P. O. apartment service between the points served by plaintiff's railroad.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs are entitled to recover \$186,707.06.

It is therefore adjudged and ordered that plaintiffs recover of and from the United States the sum of one hundred eighty six thousand seven hundred and seven dollars and six cents (\$186,707.06).

OPINION

LITTLETON, *Judge*, delivered the opinion of the court:

The railroad for which the plaintiffs are receivers is a common carrier, and, during the period April 1, 1931, to February 28, 1938, here involved, as such a carrier transported mails for the Government (39 U. S. C. 537-539).

The mails were not transported under special contracts, as had been the practice in earlier times, but were carried under and pursuant to the provisions of the Railway Mail Pay Act of July 28, 1916, 39 Stat. 412, on the basis of car-space authorized and distance moved.

This Act provided (*id.*, 429; 39 U. S. C. 541):

"All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith."

The same Act stated (*id.*, 431; 39 U. S. C. 5631):

"That it shall be unlawful for any railroad company to refuse to perform mail service at the rates or methods of compensation provided by law when required by the Postmaster General so to do, and for such offense shall be fined \$1,000. Each day of refusal shall constitute a separate offense."

Under these, and other statutory conditions, the plaintiffs transported mail tendered by the United States. The tender could not be refused except under heavy penalty, and the terms used in the record to describe such a statutory tender, such as "order" or "authorization" have es-

essentially one meaning which derives its scope, definition and force from the statutory requirements that compelled obedience. The carrier had no choice in the matter. That which protected the carrier was the provision for "fair and reasonable compensation," and, of course, the Fifth Amendment.

The Interstate Commerce Commission was by the statute (39 U. S. C. 542) empowered and directed to establish "rates and compensation" for the mail service, and in doing so was given power as follows (*id.*, 430; 39 U. S. C. 544):

"For the purpose of this section the Interstate Commerce Commission is hereby vested with all the powers which it is now authorized by law to exercise in the investigation and ascertainment of the justness and reasonableness of freight, passenger, and express rates to be paid by private shippers."

In considering the subject of mail pay the Commission was required to hold hearings, of which the interested carriers were to receive notice and give response thereto. The Statute provided (*id.*, 430; 39 U. S. C. 547):

"For the purpose of determining and fixing rates or compensation hereunder the commission is authorized to make such classification of carriers as may be just and reasonable and, where just and equitable, fix general rates applicable to all carriers in the same classification."

The Postmaster General was required (39 U. S. C. 546) to furnish the Commission with necessary data, so that all interested parties were brought together and as well informed as might be.

While the Act left to the Commission the task of classifying the carriers, the Act itself classified the type of service to be compensated for. There were five of these classifications, although two only are here directly involved. These

two are (1) apartment railway post office car service, and (2) closed pouch service. The Act defined apartment railway post office car mail service as service by apartments less than forty feet in length in cars constructed, fitted up, and maintained for the distribution of mails on trains, with two standard-sized apartments, one 15 feet long and another 30 feet in length. Closed-pouch mail service was therein defined as transportation and handling by railroad employees of mails on trains on which full or apartment railway post office cars were not authorized. With exceptions noted, the authorizations for closed-pouch service to be for units of seven feet and three feet in length, both sides of car.

Maximum rates for the service were set forth in the Act. The statutory procedure for the establishment of rates and compensation appears in time to have been complied with, and the Interstate Commerce Commission set up three classifications of railroad mail carriers.

There is some confusion in the record over the denominations of these classifications. The form of annual report prepared by the Commission defines Class I companies as those having annual operating revenues above \$1,000,000, Class II companies as those having annual operating revenues from \$100,000 to \$1,000,000, and Class III companies as having annual operating revenues below \$100,000.

However, classification by the Commission for mail pay purposes was otherwise. One class embraced railroads more than 100 miles in length, another separately operated railroads 50 to 100 miles in length, and another separately operated railroads less than 50 miles in length. Because of its revenues plaintiffs' railroad was, at least for a time, a Class I railroad for reporting purposes, and for mail pay purposes it was classed as a road exceeding 100 miles in length. But the Commission's decision of July 10, 1928, 144 I. C. \S 673, 716, shows that this use of mileage as determining classification was not absolute.

The conversion from a weight basis to a space basis for computing a fair and reasonable compensation for carriage of the mails required investigation and consideration. It must be borne in mind that the space basis was not a matter of tenancy. It was to be used for the purpose of paying for transportation. Transportation was the heart of the matter, and space only a factor in the measure or yardstick used.

50 The Postmaster General devised three formulae for application of the space basis to transportation of the mails. They were termed "plans," and are described in the findings. Plan No. 2 is the one with which we are here concerned for it is the one adopted in substance by the Interstate Commerce Commission, and it was on the basis of that plan that rates were derived for transportation of the mails.

All this, of course, required an extended investigation both on the scene of operations throughout the country, and in the responses and the reports made by the carriers to the Commission from time to time.

Since this was a comparatively new undertaking it was found necessary by the Commission to group and to generalize. To establish individual, specific rates from point to point would have been a stupendous proposition. Innumerable rates on freight from point to point were already in effect, but they were a growth of many years and founded

on decades of experience. It is obvious that if all freight tariffs were destroyed and rate experts and all others utterly forgot what was in them, the establishment of new freight rates could not be accomplished in short order. A sizable proportion of the mails had come to be the parcel post and this naturally included articles theretofore carried by the railroad originally as freight. The consequent substitution of mail pay in place of freight collections could not justify undue decrease of earnings.

The task before the Interstate Commerce Commission in establishing mail pay was simplified by the scheme or plan authorized by Congress to group the railroads by class. The plaintiff's railroad was some 400 miles in length, that is to say over 100 miles, and it was therefore placed in the same class as the major railroads of the country. For reasons which will hereinafter appear we have little if any criticism to make of this classification. It may have been too arbitrary and too general, but we cannot revise it. We are not informed as to why the division line of 100 miles was adopted rather than some other line of cleavage. But it was not a sliding scale.

After hearings upon the matter thus authorized by Congress to be investigated and passed upon, the Interstate Commerce Commission came to a decision December 23, 1919, which is reported 56 I. C. C. 1, being given docket No. 9200.

By this decision the Postmaster General was required to use the space basis on all steam railroads, and for roads in whose class plaintiff's railroad was placed the Commission found that the fair and reasonable rates of payment for transportation of mail matter as of November 1, 1916, and to January 1, 1918, were 10 cents per mile of service by a 15-foot apartment car and 3 cents per mile of service by a 3-foot closed pouch space. There were other space rates prescribed, of course, but here we are concerned with a 15-foot apartment and a 3-foot closed-pouch space. After January 1, 1918, the rates were to be 25 percent additional, bringing those here involved to 12.5 and 3.75 cents respectively. These rates remained in effect for some time, until the railroads asked for a re-examination.

On July 10, 1928, upon a re-examination, the Commission raised the rates for roads of plaintiff's class by 15 percent, so that the rates of 12.5 cents on 15-foot apartment cars were raised to 14.5 cents per mile, and 3.75 cents on closed-pouch service to 4.5 cents per mile. These were prescribed as fair and reasonable rates to be received on and after August 1, 1928, for all roads of plaintiff's class. This determination was carried under the original docket number 9200, and is published 144 I. C. C. 675.

The plaintiffs became dissatisfied with the operation of these rates and on April 1, 1931, applied to the Commission for a re-examination and redetermination of rates as they affected the Georgia & Florida Railroad and asked for the establishment of fair and reasonable rates. Thus the plaintiffs could do under the Act of July 28, 1916, 39 Stat. 412, 430; 39 U. S. C. 553.

An investigation was made and the Commission came to a decision in the matter May 10, 1933, docket No. 9200, 192 I. C. C. 579, denying increased compensation.

In all these investigations Plan No. 2 was adhered to. The plaintiffs petitioned for a reconsideration, which was denied October 3, 1933.

Thereafter, March 3, 1934, the plaintiffs commenced an action in equity in the District Court of the United States for the Southern District of Georgia, Augusta Division, in which they sought a decree setting aside the

Commission's order of denial and requiring further proceedings. They were successful in this action and on March 12, 1935, the Commission reopened the case. Decision was rendered February 4, 1936, 214 I. C. C. 66, docket No. 9200; in which the Commission adhered to its former position and denied the application. The only additional matter introduced in evidence at that hearing appears to have been certain rules governing the separation of operating expenses between freight and passenger services.

The plaintiffs thereafter filed a supplemental petition with the District Court seeking to set aside the Commission's order of February 4, 1936. On February 23, 1937, the District Court set aside the order and the Interstate Commerce Commission and the United States prosecuted an appeal therefrom to the United States Supreme Court, *United States et al. v. Griffin et al.*, 303 U. S. 226.

The Supreme Court reversed the decree of the District Court on the ground that the District Court lacked jurisdiction. The case had been heard in the District Court by three judges under the provisions of the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208. The Supreme Court held (303 U. S. 226, 233) that as respects the Interstate Commerce Commission, injunctive relief applied only to orders of such public importance and widespread effect as to justify the extraordinary features of the Urgent Deficiencies Act, and that there was not in the case before them, such importance and effect. The Supreme Court concluded with the following language:

Fourth. The absence in the Railway Mail Pay Act of a provision for judicial review and the denial of jurisdiction under the Urgent Deficiencies Act do not preclude every

character of judicial review. If the Commission makes the appropriate finding of reasonable compensation but fails, because of an alleged error of law, to order payment of the full amount which the railroad believes is payable under the findings, the Court of Claims has jurisdiction of an action for the balance, as the claim asserted is one founded upon a law of Congress. *Missouri Pacific R. Co. v. United States*,

271 U. S. 323. Compare *United States v. New York Central R. Co.*, 279 U. S. 73, affirming 65 Ct. Cl. 115, 124.¹⁰ And since railway mail service is compulsory,

the Court of Claims would, under the general provisions of the Tucker Act, have jurisdiction also of an action for additional compensation if an order is confiscatory. *United States v. Great Falls Mfg. Co.*, 112 U. S. 645; *North American Transportation & Trading Co. v. United States*, 253 U. S. 330, 333; *Jacobs v. United States*, 290 U. S. 13, 16.

Moreover, as district courts have jurisdiction of every suit at law or in equity arising under the postal law, 28 U. S. C., § 41 (6), suit would lie under their general jurisdiction if the Commission is alleged to have acted in excess of its authority, or otherwise illegally. Compare *Powell v. United States*, 300 U. S. 276, 288, 289. But a suit under the Urgent Deficiencies Act to set aside an order concerning mail pay is not primarily one against the Commission. Primarily, it is a suit against the United States.¹¹ And the United States can be sued only when authority, so to do has been specifically conferred.

The Railway Mail Pay Act does not confer that authority.

But this is not the first case where these dual or alternative grounds for jurisdiction were considered.

In *New York Central Railroad Co. v. United States*, 65 Ct. Cls. 115, affirmed on appeal, 279 U. S. 73, which was a suit for mail pay as fixed by the Interstate Commerce Commission from the date of filing of application with that commission for readjustment of compensation, this court took jurisdiction because the carrier was "asserting a claim founded upon a law of Congress." The Act of July 28, 1916, 39 Stat.

¹⁰ Other decisions of the Court of Claims under the Railway Mail Pay Act of 1916 are: *Chicago & E. I. Ry. v. United States*, 63 Ct. Cl. 585; *Navajo County v. G. R. Co. v. United States*, 65 Ct. Cl. 327; *Chicago & E. I. Ry. Co. v. United States*, 72 Ct. Cl. 407; *Macon D. & S. R. Co. v. United States*, 78 Ct. Cl. 251, 79 Ct. Cl. 298. Compare *Perc Marquette Ry. Co. v. United States*, 59 Ct. Cl. 538; *New Jersey & N. Y. R. Co. v. United States*, 80 Ct. Cl. 243.

¹¹ Compare Judicial Code, § 211, 36 Stat. 542, 1150, as amended, 38 Stat. 219, 28 U. S. C. § 48; *Lambert Run Coal Co. v. Baltimore & Ohio R. Co.*, 258 U. S. 377, 382.

412, was involved as here. But with reference to the power and jurisdiction of the Commission this court said: Congress "erected a tribunal or accepted one already in existence to discharge a duty which was judicial in its nature, the ascertainment of reasonable compensation to carriers for services exacted by statute."

54 citing *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 327, to the effect that when a taking has been ordered, then the question of compensation is judicial.

Following the decision in *United States v. Griffin*, *supra*, February 28, 1938, the plaintiffs herein filed their original petition February 1, 1942, and amended petition December 28, 1944.

The plaintiffs sue for the principal sum of \$252,061.63 which they say represents the difference between the mail pay they received for the period April 1, 1931, to February 28, 1938, both dates included, and fair and reasonable compensation for the services rendered.

The defendant argues that the above-quoted statements of the Supreme Court are obiter. We do not think they are, but even so, what is said by way of obiter may nevertheless be good law.

A deficit in net railway operating income from the carrying of the mail is, on its face, confiscatory. That must be conceded. It is a simple proposition that needs no support and must be accepted as obvious. But, if we correctly read the decision of the Commission in the plaintiffs' case, reported in 192 I. C. C. 779, *supra*, the Commission's position is that the deficit of \$4,945 is a "computed" deficit, not necessarily an actual deficit, and therefore not to be taken as "confiscatory," although the Commission does not use that term.

The trouble with this argument is that a deficit in net railway operating income from mail is always necessarily "computed." Actual loss or actual deficit in such income is an *ignis fatuus*. This must be so until the method of arriving at a deficit receives authoritative if not common acceptance. The Postmaster General himself proposed three alternative plans which itself indicates lack of an absolute rule.

Senate Document No. 63, 78th Congress, 1st Session, entitled "Letter from the Chairman, Interstate Commerce Commission, transmitting in response to Senate Resolution No. 119, certain information on rail freight service costs in the various rate territories of the United States," states in the letter of transmittal, June 7, 1943, that the Commission had not yet had opportunity to pass judgment upon the cost figures contained in the study.

At a hearing on this case by a commissioner of this court February 18, 1946, a witness for the defendant, the Chief of Section, Cost Section of the Bureau of Transport Economics and Statistics, who was acknowledged in Senate Document No. 63 as especially contributing in the preparation of the cost study, stated, in response to a direct question as to whether the present cost formulae were much better than the cost formulae used by the Commission in 1928 or in 1931:

"Well, in 1928 and 1931 the Commission did not have really any cost formulae. They still haven't got any cost formulae, but the Cost Section was formulated for the express purpose of determining cost formulae for that they might be used by the Commission in gathering costs and might be distributed to the carriers so they would have means and procedures for gathering those costs. * * *

We thus see that ascertainment of "actual" as applied to plaintiffs' cost in the transportation of the mail, had no prospect of realization. The cost had to be a "computed" cost in any event. But had we the actual cost it would serve only as a guide, a cost to be considered, but not necessarily to govern, in arriving at fair and reasonable compensation. The question is, rather: What is the fair and reasonable cost? For we cannot proceed from an unfair and an unreasonable cost toward a fair and reasonable compensation.

Here, however, it is found that "there is no evidence which indicates that plaintiffs' operating costs were excessive in relation to the character of the road and the traffic area, or that such costs were increased by inefficiency, negligence, or uneconomical management or operation by the plaintiffs."

Nowhere in the Commission's findings or conclusions in plaintiffs' case do we find even an intimation that the so-called "actual" cost, whatever it might be, was anything but fair and reasonable. What we do find is that, on the facts as found and stated by the Commission, there is an erroneous conclusion of law by the Commission that plaintiffs have been fairly and reasonably compensated for their mail service. Cf. *Case, et al. v. Los Angeles Lumber Products Co., Ltd.*, 308 U. S. 106, 114-120.

56 The so-called "computed" cost being the only cost that can be used, it must be fairly and reasonably computed. To what extent it approaches a fair and reasonable cost not in excess of actual cost is a matter not yet within the ability of the Commission to determine. It is a question that must be answered by good judgment, by those peculiarly fitted and equipped to ascertain the requisite facts as to such cost and exercise that judgment. Congress

has chosen the Interstate Commerce Commission to perform that function, and it has done so.

As the Supreme Court has said, this Court has jurisdiction to render judgment of recovery for an amount sufficient to constitute fair and reasonable compensation under the facts as found by the Commission, unpaid through failure of the Commission, because of an error of law, to order payment thereof.

Under finding 16 herein, it is shown that the Interstate Commerce Commission found and determined that plaintiff would require an increase in its mail revenue of 87.4% in order to secure for itself, under Plan 2 adopted by the Commission, a return of 5.75% theretofore fixed by the Commission, on its investments in road and equipment engaged in mail-traffic. This determination was based on the calendar year 1931 test period. The Commission's findings were determined upon an apportionment of passenger equipment used for mail-traffic on the basis of space hired or required for carrying the mail.

Railroad expenses are not generally applicable as direct costs but require apportionments. The Commission did not, under Plan 2, which it adopted and which we must accept, determine actual costs of various operations. For the year 1931 the total operating costs of plaintiffs' road were found to be \$1,449,801. Of this sum 21.74%, or \$315,273, was determined to be apportioned to passenger train service in which the mail traffic was served. Based upon the space used or hired, the Commission determined total expenditures applicable to the mail service of \$40,673. As against these expenditures, the plaintiffs' road had a deficit in this test period of \$4,945, which indicates that its gross mail revenues were \$5,728. In other words, the mail revenues were \$4,945 less than the operating expenditures applicable to the mail service, which resulted in such deficit.

57 The Commission then determined that of the total investments in the road (rails and bed), 21.48% was apportioned to the passenger train service with a value of \$3,401,578. On the basis of mail space used or hired by the United States, the passenger train road investment of \$438,803 was applicable to the mail traffic.

In addition to the road investments, the Commission found that approximately 10% of the total investments in equipment was applicable to the passenger train service amounting to \$135,257; and that the mail traffic required \$18,279 of the investment in this passenger train equipment.

By adding the road investment of \$438,803 and the equipment investment of \$18,279 applicable to the mail traffic, it

was determined that the total investment by the carrier in road and equipment devoted to the mail service was \$457,082.

At a return of 5.75% on the total investments apportioned for mail traffic of \$457,082, it was found that a net income of \$26,282 for carrying the mails would be required for the test period 1931. Since the carrier operated at a deficit of \$31,227 for mail traffic in 1931, this deficit would have to be taken care of in an increased allowance of \$31,227 to result in a net income of \$26,282 (finding 16).

The required increase of \$31,227 in mail revenue is, as found by the Commission, 87.4% of the actual gross mail revenue received during 1931 ($\$31,227 \div \$35,728 = 87.4\%$).

The table in finding 23 herein shows first, the mail revenue received by years or fractions of years covered by the period involved herein and, second, the increase required at 87.4% of such gross revenues received to overcome and avoid the deficit. These increases for the years involved, under the findings of the Commission, total \$186,707.06.

The commissioner to whom this case was referred for the taking of testimony and the making of a report thereon has in his report included certain findings which, in the final analysis, do not directly determine the outcome of this suit, but we have retained and adopted them in our special findings of fact because they give background and illustrate the problem that was, and, for that matter, apparently still is before the Interstate Commerce Commission. They demonstrate, we think, one reason at least that Congress confided to the Commission the judicial task of determining fair and reasonable compensation. The use of the space-basis

58. system for paying transportation required consideration of the question in what proportion, if any, baggage, freight, express, passenger, mail-service should pay for space unused, in fact what should constitute unused space. There is in the record some distinction made between "unused" and "unoccupied" space. The quantities of baggage, express, and mail inevitably varied, and for practical reasons the space available would have to be ordinarily more than that physically taken by the cargo. Conceivably, also, there had to be space for handling of the cargo. Students of cost allocations or apportionments were not altogether sure as to their methods. The "out-of-pocket" or "added" cost theory has been injected into the case (findings 31-33), but we are not convinced that additional service is in any different situation than the service to which it is an addition, as far as computing fair and reasonable compensation is here concerned. We think there

is just as good reason for considering express as the added service rather than the mail. The fact that a carrier is only too glad, perhaps anxious, to carry mail to help cover other wise wasted floor space, is understandable. But that is no reason why the mail should be carried at "bargain" rates. A passenger who goes aboard a train after the coach has already accumulated a paying load, must nevertheless, and rightly so, pay full fare, along with all the rest. *C. Fred R. Conib Co. v. United States*, 103 C. Cls. 174, 183. We do not say that the added cost or out-of-pocket theory, with its implications, is inapplicable in all cases. But the theory, if we are to believe the witnesses, has not matured into practice in the determination of mail pay.

In view of the record presented the basis employed by the Interstate Commerce Commission, that is to say Plan No. 2, appears to be fair and reasonable. The studies made are in no wise shown to be out of line with the then state of the art, science, or profession of statistical analyses and cost accounting.

The deficit found in plaintiffs' mail operations was ascertained according to the formula suggested by the Government and used by the Commission to prescribe rates for general application. As we have pointed out, the ascertainment of fair and reasonable compensation must proceed from a fair and reasonable basis. The Commission has, by its use of Plan No. 2, adjudged it to be a fair and reasonable basis. And out of that basis there has been ascertained, by formulae prescribed by the Commission, what is the fair and reasonable compensation for plaintiffs' carriage of the mails beginning the first of April 1931, and ending at the close of February 1938. Fair and reasonable compensation cannot be both a deficit and the amount of \$186,707.0660 found. It is, we conclude, the latter.

The Commission's decision of May 10, 1933, 192 I.C.C. 779, states its position with reference to plaintiffs' claim as follows:

"The cost study is not considered to be an accurate ascertainment of the actual cost of service. It is an approximation to be given such weight as seems proper in view of all the circumstances. See *Railway Mail Paid*, *supra*. The comparison of mail revenue with other revenue received for services in passenger train operations shows that mail with relation to the other services is bearing its fair share of the expenses of operation and is contributing relatively more than the other services for the space furnished. Applicant receives the same rates as those received by other roads for the same kind of service. Many of these other roads

are, & applicant points out, roads which are very much larger and which have greater traffic and lower unit operating costs. On the other hand many are in much the same situation as the applicant in respect of passenger train operations. The data submitted fail to justify giving the applicant rates higher than those now paid other railway common carriers for like services.

We quote rather than paraphrase this, for what it says is important. We are of the opinion that the "approximation" should be given greater weight than the Commission affords it, because, as we have said and the Commission in effect admits, there is no such thing as certainty in actual cost. Approximate, or as it is called, "computed" cost must be relied upon, and a matter of law must be decisive. There is no alternative, at least no satisfying alternative. Of course there were other methods of computing cost, but the Commission, put to the choice, selected Plan No. 2. And it did not, in the decision of May 10, 1933, abandon Plan No. 2 and select another.

The fact that the plaintiffs' railroad "receive the same rates as those received by other roads for the same kind of service," is not responsive to the plea that those rates, as to the plaintiffs, are confiscatory. The service is compulsory, economy and efficiency of operation are undisputed. This is not a case where the carrier may cut down its expenses and thus convert the remuneration into one that is fair and reasonable. It has already reached the efficient and economical stage, and if it must carry the mail, the remuneration must fit that situation. Here it has not done so.

We cannot agree that the basis of compensation is to be governed by the added or out-of-pocket cost theory. It was not applied in Plan No. 2, as that plan is explained to us, and we cannot find that plan grossly erroneous. The plan applied to a group gave certain rates, but the rates good for the group did not fit plaintiffs' road. The plan applied to the plaintiffs' road gave higher rates than to the average road and are the only rates presented in the Commission's decisions that give the plaintiffs fair and reasonable compensation. The plaintiff here are entitled to them. The average road has no physical existence and the general rates put into particular effect would mean greater or less compensation for the individual carrier. But the governing statute was careful to make provision whereby the rates might not be confiscatory for any one road.

The plaintiffs were not in a bargaining position. It was unlawful for them to refuse "to perform mail service at the rates or methods of compensation provided by law," etc.

The duty of the Commission extended beyond that of establishing rates. The statute went further and required the Commission to fix fair and reasonable compensation to the individual carrier. It had to be the individual carrier, for otherwise the term "compensation" is meaningless. Only in the event that they were "just and equitable," could the Commission "fix general rates applicable to all carriers in the same classification." 39 Stat. 412, 430. Rates are not just and equitable that give one carrier a net revenue and impose upon another carrier in the same class, a deficit.

The rates authorized by the Commission were based on a grouping together and then given particular application without change. It did not follow that rates, fair and reasonable for an average road (which in fact did not exist), would be fair and reasonable for all existing roads. The

statute required more than mere rates, it required 61 fair and reasonable compensation, and the duty of fixing upon and authorizing payment of fair and reasonable compensation in any particular case could not be avoided because of the magnitude of the task, or because some other methods of calculation, which, although neither approved nor adopted, might possibly give other results.

There is no presumption that the average is true of the particular. The presumption is otherwise, and the plaintiffs, having shown their railroad to be in a comparatively low scale, and thus distant from the average, had no great burden of proof before them in presenting their case to the Commission. It was for the Commission to demonstrate that the general rates prescribed gave the plaintiffs a fair and reasonable return. This the Commission failed to do. More than that, the Commission has by its findings, using its adopted plan and its own methods as applied to plaintiffs' circumstances, proved that plaintiffs have been underpaid, \$186,707.06 in fair and reasonable compensation for the period in question. See Finding No. 23.

If that which the Commission determined is fair and reasonable compensation for the representative road, it must, we think, be fair and reasonable for any one road that is so represented. The reasons given by the Commission for not ordering payment, on the basis of its findings, of the annual sums making up the above total of \$186,707.06, are not convincing or even persuasive. In our opinion they all overlook the statutory mandate that the compensation to be allowed for carrying the mails must be reasonable, and the constitutional one that it must be just.

There is the question as to the statute of limitation, Section 156 of the Judicial Code, U. S. C., Title 28, § 262. Under that statute, a claim is barred unless the petition is filed

"within six years after the claim first accrues." The time when the claim can be definitely ascertained and set on goes: *Thayer v. United States*, 191 U. S. 294, 296.

Since the determination of fair and reasonable compensation was confided by Congress to the Interstate Commerce Commission, the amount of the claim was not ascertainable until the Commission had given its final determination. This date was February 4, 1936, 214 U. S. 66. It is true that the Commission reopened its docket No. 9200 under the decree of a district court, which was thereafter held by the Supreme Court to be without jurisdiction over the complaint, but the Commission did in fact reopen the case, considered it on the merits, and did in fact thereupon render its final decision in the matter, affirming its previous holding.

The six-year statute of limitation therefore began to run February 4, 1936. Since the original petition was filed herein February 2, 1942, the claim is within the statute. That the claim relates back to the filing of the application with the Commission has been held by the Commission, by this Court, and by the Supreme Court, *Railway Mail Pay*, 144 U. S. 675, 717, and *New York Central Railroad Co. v. United States*, 65 U. S. 115, 124 ff., a decision which antedated that of the Commission, and which was affirmed by the Supreme Court, 279 U. S. 73.

The final question relates to plaintiffs' claim for the allowance of interest on the principal sum recoverable, not as interest but as a part of, and to make just compensation complete and entire. It is true that the basic Act of Congress makes use of the terms fair and reasonable compensation, just and equitable. But in *United States v. Thayer-West Point Hotel Co.*, 329 U. S. 585, the Court refused to assign a technical and absolute meaning to the term "just compensation," and this court, in the *New York Central* case, *supra*, which involved, as here, "fair and reasonable compensation" for compulsory carriage of the mails, stated: "We do not think the plaintiff can have judgment for interest on the deferred payments. We are not determining just compensation but are giving effect to an authorized order of the Interstate Commerce Commission. In such case the statute forbids the allowance of interest. Sec. 177, Judicial Code, as amended. Cases cited in *Laurie & Myers Co.* case, 61 U. S. 693, 704."

Here, also, we are giving effect to an order of the Interstate Commerce Commission as properly construed and not determining compensation in an original proceeding under the Fifth Amendment.

Plaintiffs are entitled to judgment in the sum of \$186,707.06, and it is accordingly so ordered.

HOWELL, Judge; MADDEX, Judge; WHITAKER, Judge; and JONES, Chief Justice, concur.

63. *Judgment of the Court*

At a Court of Claims held in the City of Washington on the 5th day of April, A. D. 1948, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs are entitled to recover \$186,707.06.

IT IS THEREFORE ADJUDGED AND ORDERED that plaintiffs recover of and from the United States the sum of one hundred eighty-six thousand seven hundred and seven dollars and six cents (\$186,707.06).

65. *Proceedings after Entry of Judgment*

On May 19, 1948, the defendant filed an application for transcript of record on petition for writ of certiorari which is as follows:

To the Clerk of the Court of Claims:

Defendant intends to file in the Supreme Court of the United States, within the statutory period and without unnecessary delay, a petition for a writ of certiorari to review the judgment of the Court of Claims in this case. Application is hereby made for a certified transcript of the record, to include the following:

1. The pleadings, the findings of fact (including all documents incorporated by reference therein), conclusion of law and judgment and opinion of the Court;

2. The portion of the typewritten transcript of evidence which defendant deems material to the errors assigned, together with Defendant's Exhibits 1, 2, 3, 7, 8, 9, and 25, an original and five copies of which are filed herewith;

3. This application and all orders hereinafter issued by the court with reference thereto.

Respectfully requested.

(S) H. G. MORISON

H. G. Morison,

Assistant Attorney General

OTHER PARTS OF THE RECORD AS NOTED ABOVE ACCOMPANY THIS RECORD UNDER SEPARATE COVER.

67. *Order of the Court Settling and Approving Transcript of Record on Petition for Certiorari*

The defendant having presented to the court the within transcript from the original record of the court in the above entitled case as that portion material to the errors

assigned in its application for record on petition for certiorari, and the plaintiff having made no objection thereto, the court upon consideration thereof finds the transcript to be an accurate statement of the portions of the original record material to the errors assigned, and orders the same on this fourth day of June, A. D. 1948, SETTLED and APPROVED.

By the Court,

ST. MARYS JONES,

Chief Justice.

69 Clerk's Certificate to foregoing transcript omitted in printing.

70 *Motion for Substitution of Parties Plaintiff*

On June 30, 1948, plaintiff made a motion for substitution of Alfred W. Jones, Receiver for Georgia & Florida Railroad as party plaintiff in these proceedings in place of William V. Griffin, and Hugh W. Purvis, Receivers for Georgia & Florida Railroad.

On July 9, 1948, the above motion to substitute parties plaintiff was allowed by the court.

71 In the Court of Claims of the United States

WILLIAM V. GRIFFIN AND HUGH WILLIAM PURVIS
RECEIVERS FOR GEORGIA & FLORIDA RAILROAD, PLAINTIFFS
No. 45422

v.

THE UNITED STATES, DEFENDANT

Portions of Transcript of Evidence Designated by Defendant for the Purpose of Filing a Petition for a Writ of Certiorari in the Supreme Court
and

Portions of Transcript of Evidence Designated by Plaintiff for the Purpose of Filing a Petition for a Writ of Certiorari in the Supreme Court

L. O. Todd, a witness produced by the plaintiffs, having been duly sworn, testified on November 2, 1944 as follows:

Page 25 Direct Examination by Mr. Herr:

Q1. Mr. Todd, will you please state your name and address?

A. My name is L. O. Todd. I reside in North Augusta, South Carolina.

Q2. Will you please state what your position is?

A. I am Assistant to the Receiver and General Manager and Chief Accounting Officer for the Receivers of the

Georgia & Florida Railroad Auditor and Assistant Secretary of the Georgia & Florida Railroad, a corporation and Secretary and Auditor of the Statesboro Northern Railway.

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Page 32: On November 1, 1917, I was employed by the Receivers of the Georgia and Florida Railway, predecessor of the Georgia & Florida Railroad, as a Clerk in the Accounting Department; was promoted to Assistant Bookkeeper on July 1, 1918; to Chief Clerk to Superintendent Motives Power on November 16, 1919; to Division Accountant March 8, 1920, and was appointed Assistant Auditor on November 1, 1923. I was elected Auditor and Assistant Secretary of the Georgia & Florida Railroad by the Board of Directors on January 31, 1929, and when Receivers were appointed on October 19, 1929, I was appointed Auditor for the Receivers and was promoted to my present position on April 16, 1931. I have been responsible for the Statistical work on the Georgia & Florida Railroad since I was appointed Assistant Auditor on November 1, 1923.

As Auditor for the Receivers, I testified for the petitioners in the proceedings before the Interstate Commerce Commission, as set out in the stipulation of the transcript of record filed in the Supreme Court of the United States on April 16, 1937, and printed in the record in Case No. 63, October Term, 1937, United States of America and Interstate Commerce Commission, Appellants, vs. W. V. Griffin and J. W. Purvis, Receivers for Georgia & Florida Railroad, 363 U. S. 226, 239, 82 L. Ed. 764.

Page 1:

The Receivers operating the Georgia & Florida Railroad as a railway common carrier have been required under the Railway Mail Pay Act of July 28, 1916 (U. S. C. A. Title 39, Sections 523 to 568, inclusive) to transport, and have transported, mail matter offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General from and before April 1, 1931, to and since February 28, 1938, under so-called orders of authorization upon which is termed a space basis from April 1, 1931, to February 28, 1938.

The significance of the date April 1, 1931, is that was the date on which the Receivers filed their petition with the Interstate Commerce Commission asking for a reexami-

nation of the rates of mail pay compensation, thereby giving notice that the rates of mail pay theretofore paid would no longer be accepted as sufficient to provide just and reasonable compensation for the use of the property being taken.

The significance of the date February 28, 1938, is that was the date on which the Supreme Court of the United States handed down its decision in No. 65, October Term, 1937, United States of America and Interstate Commerce Commission vs. W. V. Griffin and H. W. Parvis, Receivers for Georgia & Florida Railroad, 303 U. S. 226-239.

The present suit on the claim of the Receivers was confined to that period, and further claim for the subsequent period has been reserved.

On the first day of April, 1931, the Receivers filed their application with the Interstate Commerce Commission, designated as "Railway Mail Pay, in the Matter of the Application of the Georgia & Florida Railroad Company for Increased Rates of Pay", being a part of No. 9200 on the formal docket of the Commission, alleging that the rates being received for the transportation of the mails were not fair and reasonable, and requesting the

Plan A:
to re-examine the facts and circumstances surrounding such transportation and to fix and determine fair and reasonable rates to be received for services rendered on and after said April 1, 1931. A hearing was duly had thereon, at which the applicants therein and the Post Office Department were given an opportunity to present evidence and be heard, and did, among other matters and things, present a study which showed the cost to the Receivers of transporting the mails, which study was jointly made and agreed to by said Receivers and the Post Office Department. After said hearing briefs were filed, the Examiner thereafter submitted a proposed report, and the case was orally argued before Division 5 of the said Commission.

Thereafter, on the 10th day of May, 1933, said Division 5 of the Commission handed down the report of the Commission in said cause (192 I. C. C. 779), and also a certain order was made and entered in that proceeding on the 10th day of May, 1933.

Thereafter, on July 6, 1933, said applicants filed their petition for a reconsideration in said cause, and the said Commission on the 3rd day of October, 1933, by its order entered on that date in said cause, denied the petition for reconsideration.

Page 8:

The WITNESS: The Receivers thereafter, on March 2, 1934, duly filed their petition in the United States District Court for the Augusta Division of the Southern Judicial District of Georgia, in Equity No. 207, seeking to have said order and decree of the Commission of the 10th day of May, 1933, perpetually set aside, suspended and annulled, and following the hearing by the Court, an order of injunction was issued and opinion filed January 18, 1935.

Thereafter, the Interstate Commerce Commission by its order of March 12, 1935, reopened the said proceedings in said Docket 9200 "Railway Mail Pay, In the Matter of the Application of the Georgia & Florida Company for Increased Rates of Pay".

Thereafter, following the filing of briefs and the hearing of oral argument, the Interstate Commerce Commission, *Page 9:*

on February 4, 1936, rendered its report on further hearing (214 I.C.C. 66).

Thereafter, on June 20, 1936, the Receivers filed a supplemental petition in the United States District Court for the Augusta Division of the Southern Judicial District of Georgia, in Equity No. 228, Supplemental to Bill in Equity, No. 207, seeking to perpetually set aside, suspend and annul said order of the Commission of the 4th day of February, 1936. A hearing was had at which was

presented the entire record before the said Commission upon the reopening of said proceeding, and at which no other evidence was introduced, and on February 22, 1937, a three judge Court decreed that said order of the Interstate Commerce Commission of February 4, 1936, be set aside and annulled and that said Commission should take such further action in the premises as the law requires in view of the annulment and setting aside of said order.

Thereafter, on May 15, 1937, the United States of America and the Interstate Commerce Commission perfected an appeal to the Supreme Court of the United States from said order of the United States District Court for the Augusta Division of the Southern Judicial District of Georgia. Upon said appeal the question of jurisdiction of the specially constituted Three Judge District Court was for the first time raised, and on December 13, 1937, the Supreme Court indicated that the

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said specially constituted Three Judge Court had jurisdiction, but in its decision handed down on February 28, 1938, (303 U.S. 226), determined that the remedy provided by the

Urgent Deficiencies Act, of October 22, 1913, Chapter 32, 38 Stat. 208, 210, 220, was not applicable to said order of the Interstate Commerce Commission.

During the entire period from April 1, 1931, to February 28, 1938, the Receivers have furnished railway mail service to accommodate the United States mails in compliance with commissions and orders of the Postmaster General. A 15-foot apartment has been furnished upon requisition by the Postmaster General, for which the Receivers have been paid for the entire period from April 1, 1931, to February 28, 1938, at the rate of 14.5 cents per mile. Three foot closed pouch service has also been furnished upon requisition of the Postmaster General, for which the Receivers have only had pay for the entire period from April 1, 1931, to February 28, 1938, at the rate of 4.5 cents per mile.

During the period from April 1, 1931, to February 28, 1938, the Receivers received the following amounts for 15-foot apartment service:

\$23,477.34 for the period from April 1, 1931 to December 31, 1931

\$31,227.47 for the year ended December 31, 1932

\$31,078.04 for the year ended December 31, 1933

Page 11:

\$29,518.95 for the year ended December 31, 1934

\$23,593.98 for the year ended December 31, 1935

\$22,632.06 for the year ended December 31, 1936

\$23,569.99 for the year ended December 31, 1937

\$3,799.29 for the period from January 1, 1938 to February 28, 1938.

During said period from April 1, 1931, to February 28, 1938, the Receivers received the following for 3-foot closed pouch service at the rate of 4.5 cents per mile:

\$2,469.85 for the period from April 1, 1931, to December 31, 1931

\$3,221.28 for the year ended December 31, 1932

\$3,206.35 for the year ended December 31, 1933

\$3,045.30 for the year ended December 31, 1934

\$2,426.54 for the year ended December 31, 1935

\$2,454.02 for the year ended December 31, 1936

\$2,447.16 for the year ended December 31, 1937

\$392.28 for the period from January 1, 1938, to February 28, 1938.

For the period from April 1, 1931, to February 28, 1938, the Receivers have been paid by the United States Government for transportation of mail at the rate of 14.5 cents per mile for service furnished by the Receivers in 15-foot railway postoffice apartment units, and at the rate of 4.5

cents, per mile for service furnished by the Receivers in 3-foot closed pouch units.

The Receivers claim they are entitled:

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to receive from the United States Government for the period from April 1, 1931, to February 28, 1938, compensation at the rate of 27.47 cents per mile for the transportation of the mails in 15-foot railway postoffice apartment units, and at the rate of 8.33 cents per mile for service furnished by the Receivers in 3-foot closed pouch units.

No action has been taken on this claim by Congress or by any of the Departments, Boards or Commissions of the United States Government other than above stated, further than that a petition filed with the Interstate Commerce Commission on February 1, 1944, for reopening, rehearing and reconsideration was denied by that Commission on March 6, 1944.

Said claim has not been assigned or transferred in whole or in part. The Receivers are citizens of the United States and have at all times borne true allegiance to the Government of the United States; and have not in any way
79 voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

Mr. Rood: Counsel desires to reserve the right of cross examination for later.

Mr. Hitt: The record will show we reserve the right to put Mr. Todd on again later.

The Commissioner: Yes, Mr. Todd will be recalled at a later time.

On December 18, 1944 Witness Todd resumed his testimony as follows:

By Mr. Hitt:

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Q3. Mr. Todd, were you a witness in the hearings before the Interstate Commerce Commission in the proceedings resulting from the petition of April 1, 1931, by the Receivers of the Georgia & Florida for a re-examination of the rates of mail pay in I. C. C. Docket No. 9200?

A. Yes.

Q4. Were you present when all the other witnesses testified in the hearing before the Interstate Commerce Commission?

A. Yes, there were two hearings, and I was present at both throughout the entire time of those hearings and heard all the witnesses.

Q5. Do you know the history of the proceedings before the Interstate Commerce Commission and in the three-judge Federal Court for the Southern District of Georgia, and before the Supreme Court of the United States?

A. Yes, I was currently informed on all developments as they occurred.

Q6. Have you an exhibit which sets forth the essential proceedings before the Interstate Commerce Commission and the three-judge Federal Court?

A. Yes.

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Q7. Please describe that exhibit so that it may be clearly identified?

A. This exhibit is a printed volume of some 313 pages and an index of three pages, and has a cover page entitled as follows:

"Transcript of Record
Supreme Court of the United States
October Term, 1937
No. 63"

The United States of America and Interstate Commerce
Commission, Appellants,

v.

W. V. Griffin and H. W. Purvis, Receivers for Georgia
& Florida Railroad.

Appeal from the District Court of the United States
for the Southern District of Georgia.

(Filed May 15, 1937)"

Q8. Was the printing of this volume under the direction and control of the Supreme Court of the United States?

A. I so understand, and it constitutes the record which was before the Supreme Court when the matter was before it as Case No. 63, October Term, 1937, when it handed
81 down its decision of February 28, 1938.

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Q9. Can you give us a chronological statement of the principal items which are included in this printed volume with reference to the page numbers?

A. Yes.

Q10. Please do so.

A. April 1, 1931—Petition of G. & F. R. R. to I.C.C. for re-examination of rates—pages 21-22.

April 9, 1931. Answer of Postmaster General to petition for re-examination—pages 23-24.

May 14, 1931—L.C.C. order for re-examination—pages 24-25.

May 10, 1933—Report and order of L.C.C. (192 L.C.C. 779) pages 5-10.

July 6, 1933—G. & F. R. R. petition to L.C.C. for reconsideration—pages 25-27.

July 24, 1933—Reply of Postmaster General to petition for reconsideration—pages 27-29.

October 3, 1933—Order of L.C.C. denying petition for reconsideration—page 11.

March 3, 1934—Petition to U. S. District Court, Augusta Division, Southern Judicial District of Georgia—pages 1-5.

January 23, 1935—District Court opinion and decree—pages 29-30.

March 12, 1935—Petition of Postmaster General to L.C.C. for

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re-opening of record—pages 31-32.

82 March 12, 1935—Order of L.C.C. reopening record—pages 32-33.

February 4, 1936—Report of L.C.C. on further hearing—pages 41-51.

June 20, 1936—Supplemental bill of G. & F. R. R. in District Court—pages 35-40.

February 23, 1937—District Court opinion and decree—pages 55-58.

April 16, 1937—Stipulated narrative of the evidence before the L.C.C.—pages 59-304.

Q11. Does the stipulated narrative of the evidence before the Interstate Commerce Commission recite the testimony correctly?

A. Yes. It is, of course, a condensation of the verbatim testimony in narrative form, prepared, I understand, by counsel for the Interstate Commerce Commission and as set out in the stipulation on page 59, and agreed to by counsel for the Receivers as a true and correct transcript of all the oral testimony of the witnesses, and 39 exhibits.

Q12. Have you any other exhibits to show what further attempts have been made to secure a determination of fair and just compensation by the Interstate Commerce Commission?

A. Yes. I have here copy of a petition filed with the Commission on February 1, 1944, asking for a re-opening

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and rehearing for the presentation of additional evidence, before going further with the hearing before the Court of Claims.

Q13. Anything else?

A. Yes, I have here copy of the answer of the Postmaster General, dated February 11, 1944, in which re-opening, rehearing and reconsideration was opposed, and I call special attention to the representation on page 6 of that answer that the regularly and properly made joint cost study has been accepted by the Post Office Department as sufficient.

Mr. HERR: Mr. Commissioner, may this be marked for identification as Exhibit No. 3?

Q14. Anything else?

A. Yes, I have here a copy of the Commission's order of March 6, 1944, in which it refused to re-open the proceeding for further hearing or consideration.
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Mr. HERR: Mr. Commissioner, we offer in evidence the Exhibits Nos. 1, 2, 3, and 4, described by the witness for the purpose of establishing the jurisdiction of the Court of Claims in this suit and to show the record before the Interstate Commerce Commission, and that the prerequisite steps which have been taken without avail before the Interstate Commerce Commission and in the United States District Court for the Augusta Division of the Southern District of Georgia in an effort to obtain fair and reasonable compensation for the taking of the use of the Receivers' property and services.

The COMMISSIONER: Let us dispose of these one at a time. Offer your Exhibit No. 1, and if you have any explanation to make, make it.

Mr. HERR: Mr. Commissioner, we offer in evidence, *St. 82* Exhibit No. 1 for identification.

The COMMISSIONER: Now, state the purpose of it.

Mr. HERR: For the purpose of establishing the jurisdiction of the Court of Claims in this suit, and to show the record before the Interstate Commerce Commission and the steps which have been taken without avail before the Interstate Commerce Commission and in the United States District Court for the Augusta Division of the Southern District of Georgia, in an effort to obtain a fair and
Page 22:

reasonable compensation and for the taking and use of the Receivers' property and services.

Now, let me go a step further: Also, we offer this same Exhibit No. 1, to show both the records and the supporting details of the joint cost study for the year 1931 upon the formula or bases customarily employed in proceedings before the Interstate Commerce Commission for the determination of rates of mail pay, as prescribed by the Post Of

Post-Office Department, as the witness has already pointed out, as being the regularly and properly made cost study accepted by the Post-Office Department as sufficient.

It has been testified to by Mr. Todd, one of the witnesses who is now on the stand and can be cross examined. There were other witnesses who are not now here, because we felt we had a tentative understanding with counsel for the Government that we would put in Exhibit No. 1 by stipulation, and were not advised until Saturday that this would not be done.

Page 23:

Mr. Hirt: I am now offering to produce later for cross examination any of the other witnesses as well as Mr. Todd, in case counsel for the Government advises us they desire to do so.

Therefore we offer this exhibit, subject to the reservation by the Government of the right to cross examine at any time to be agreed upon, with the understanding that, in case the Government does not elect to further cross examine by that time, this exhibit will be received in evidence for the purpose of showing that cost study for the year 1931.

Page 24:

Mr. Rouse: For the purpose of proving the previous attempt by the plaintiffs to recover, we do not object to that part of Exhibit No. 1 which recites and copies the findings, the orders, opinions, and decrees of the Interstate Commerce Commission and of any court; nor do we object to the petitions and answers of the parties as copies in Exhibit No. 1.

We do object to the long narrative statement of the evidence and statistical tables, etc.

Accordingly, I therefore object to everything in Exhibit No. 1 from Page 59 to Page 304, the print pages; but not to Pages 1 to 48, or the tables after 304 for the purpose of showing the history of the proceedings and attempts made by the plaintiffs to get their money.

The Commissioner: The objection to that portion of the Page 25:

exhibit containing evidence produced before the Interstate Commerce Commission is sustained; the Plaintiffs except, and the reception will be noted.

Now, let us have you state, Mr. Hirt, the other purpose for which you offer that portion of the transcript containing the evidence produced before the Interstate Commerce Commission.

Mr. HITT: Mr. Commissioner, we offer the balance of the transcript from pages 59 to 304, inclusive, as direct testimony upon the matter of compensation to be determined by the United States Court of Claims; it being substantially the testimony which will be given by the witnesses, if here present and testifying.

That sets forth the joint cost study and the underlying facts in the joint cost study, and the testimony of witnesses both for the Post Office Department and for the carrier.

Now, we make that offer subject to the right of the Government to cross examine the witnesses if they desire to do so; but, in the event that they elect not to cross examine the witnesses, we would ask that the testimony be received in evidence.

Mr. ROOD: For what purpose?

Mr. HITT: As direct testimony upon the compensation due the carrier in this proceeding, based upon the formulas *Page 26:*

and bases customarily employed by the Interstate Commerce Commission, and which were employed in their consideration of the petition of the Plaintiffs for a re-examination of the railway mail pay.

The COMMISSIONER: You offer it as your evidence to prove the value of the services?

Mr. HITT: Correct, yes, sir.

87 The COMMISSIONER: That is, your substantive evidence on the merits?

Mr. HITT: On the merits, on the formulas and bases set out in that exhibit.

Mr. ROOD: This was a cost study made in 1931?

Mr. HITT: Yes, sir.

The COMMISSIONER: Let us get off the record a minute.

(Here followed discussion off the record.)

Mr. ROOD: Mr. Hitt, as I understand it, this proposed evidence now under discussion is offered as proof of so much of the claim as was stated in the original petition, before its amendment?

Mr. HITT: That is correct; that is to say, the claim has been figured out on the basis of these formulas and cost studies in Exhibit No. 1.

Mr. ROOD: The Defendant objects, first, on the ground that the study of 1931 costs is irrelevant in this proceeding, in view of the fact that the petition was not filed until *Page 27:*

1942 and that all claims which accrued previous to February 2, 1936, are therefore barred by the Statute of Limitations.

Insofar as it is offered to prove any part of the claim, which accrued before 1936, the Defendant objects as irrelevant.

Insofar as it is offered to prove that part of the claim, which is not barred by the Statute of Limitations, that is, claim for payment for services rendered during 1936 and thereafter, evidence of this cost study is incompetent, because, clearly, the costs and operating conditions pertaining to 1936, 1937, and 1938 cannot be shown by a cost study made in a four or five weeks' period back in 1931.

We all know how the turbulent gyration affected the national business economy and the railway industry, especially the railway industry in Georgia, between 1931 and 1936.

If the Defendant is overruled on the issue under the Statute of Limitations; and if the 1931 costs are relevant to this proceeding, in the opinion of the Commissioner and the Court, the Defendant is willing to accept the printed pages 59 to 304, inclusive, of Exhibit No. 1 as the testimony of the Plaintiffs offered to show the 1931 costs, subject to the right of the Defendant to have the witnesses produced and made available in this proceeding for cross examination.

Page 28:

The COMMISSIONER: As to the first point in the objection, that the testimony is irrelevant, with reference to any claim prior to 1936, on the ground that such claims are barred by the Statute of Limitations, I am in doubt as to whether the Statute of Limitations commences its run prior to the finality of the order of the Interstate Commerce Commission; and for that reason, the objection on that ground is overruled.

Mr. Robb: An exception.

The COMMISSIONER: With reference to the second ground of the objection, that part of the transcript which contains the narrative of evidence and the exhibits therewith, introduced before the Commission, is admitted upon the assumption that it formulates or demonstrates the appropriate method for the determination of costs for a particular year; for whatever bearing the different items and facts may, because of the possible effect upon continuous operation, have upon the costs for the subsequent years; and upon the condition that, except when admitted for these purposes, the evidence is contexted up with the subsequent proof showing that the facts and items continued to be the same, or what differences there were for subsequent years.

Mr. Robb: Exception.

The Commissioner: The evidence admitted upon the conditions stated above, and particularly with the understanding that the

Page 29:

Defendant shall have the right to have the witnesses produced for the purpose of cross-examination, if it so demands.

Page 30:

Mr. Hitt: We offer, as Plaintiffs' Exhibit No. 2, a copy of the petition to the Interstate Commerce Commission in behalf of the Plaintiffs, February 1, 1944, asking for re-opening and rehearing and reconsideration of further evidence. This, I may say, was pursuant to the understanding with the Court that it would grant a postponement of the hearing for the purpose of doing so.

Mr. Roan: No objections.

The Commissioner: It will be admitted.

Page 30:

Mr. Hitt: We offer in evidence, as Plaintiffs' Exhibit No. 3, a copy of the answer of the Postmaster General to the petition for reopening, rehearing, and reconsideration, dated February 11, 1944.

Mr. Roan: We are now offering this, Mr. Hitt?

Mr. Hitt: I am completing the record. It is comparable to the record that is already included in Plaintiffs' Exhibit No. 1, showing the petitions and answers, etc.

Page 31:

Mr. Roan: I object to this, because it contains a discussion by the Post Office Department of the PCA cost study, which might be construed as admissions by the Defendant.

The Commissioner: Objection overruled.

Mr. Roan: An exception.

Mr. Hitt: We now offer Plaintiffs' Exhibit No. 4, being a copy of the order of the Interstate Commerce Commission of March 6, 1944, denying the Plaintiffs' petition of February 1, 1944, for re-opening, rehearing, and reconsideration.

Mr. Roan: No objections.

The Commissioner: Admitted.

Page 32:

Q15. Do you know whether or not a similar cost study was ever made for the Georgia & Florida before the one in 1934?

A. Yes. In a previous proceeding which involved all, or nearly all, steam railroads in the United States a joint cost study was made in the year 1931 on the same formula or basis for all the railroads involved, including the Georgia & Florida, as described in the opinion and decision of the Interstate Commerce Commission of July 10, 1928, 144 I.C.C. 675.

Q16. Can you tell us in a general way if the result of that cost study was similar to the joint cost study in 1931?

91 Mr. Room: May I ask what you mean by "joint cost study"?

Mr. Herr: That is the term that is used by the Post Office Department, referring to the joint cost study of 1931, and in other cases, in which the formulae and bases employed were, generally speaking,

The Commissioner: Who was the other part of the "joint"?

Mr. Herr: "Joint" is between the carrier and the Post Office Department, with the sponsorship of the Interstate Commerce Commission.

Mr. Room: When was the joint cost study made, and by whom?

Mr. Herr: Made by the Post Office Department and the carrier.

Page 31:

The Commissioner: I suspect the witness ought to testify to that.

Mr. Room: Yes, sir. I should have reserved that for cross examination.

The Witness: Yes, the results were substantially similar, allowing for some differences in the factors in the different periods.

By Mr. Herr:

Q17. Can you tell what action the Commission took in that case?

A. The Commission's decision of July 28, 1928, to which I have already referred, will, I believe, answer that question better than I can.

Q18. I just want you to state in a general way, for the present information of all concerned, what you understand that result was.

A. For Class I railroads, except New England lines, whose rates had been increased 35% over the rates for other lines in Railway Mail Pay, S.A.C.C. 157, on the average the joint cost study indicated a need for an increase of 26.48% (Page 688) and they were given an increase of 15% for the period from the date the carriers filed their applications for re-examination or where applications were

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not filed on and after July 24, 1925, to July 31, 1928.

Page 74:

rates established for each mile of service by 15-foot apartment car on and after August 1, 1928, 14.5 cents instead of 12.5 cents previously in effect, was an increase of 16%, and for 3-foot closed pouch space, 4.5 cents, instead of 3.75 cents previously in effect, was an increase of 20%.

For short lines under 100 miles in length, the indicated need was 91% (Page 704) and they, with certain exceptions, were given an increase of 80% for the period from dates the carriers filed their applications for re-examination, or where applications were not filed, on and after July 24, 1925, to July 31, 1928.

The scale of rates established for each mile of service by 15-foot apartment car on and after August 1, 1928, 27 cents for separately operated railroads 50 to 100 miles in length, instead of 15 cents previously in effect, and 34 cents for separately operated railroads less than 50 miles in length instead of 18.75 cents previously in effect, were increases of 80% and 83%, respectively, and the scale of rates established for each mile of service by 3-foot closed pouch space on and after August 1, 1928, 8 cents and 10 cents for similar classes of railroads, instead of 4.5 cents and 5.625 cent rates previously in effect, were an increase of 77.78%.

For the Georgia & Florida the indicated need was 78%, but because it was over 100 miles in length it was only given

Page 75:

the same increase as was given to Class 1 roads generally, and that is why we subsequently sought a further re-examination in 1931, with the expectation that the rates would be fixed on the basis of our own facts, instead of lumping us in with Class 1 roads generally.

Mr. HITT: On Page 8 of the Commission's report, it says, "A return upon this computed at 3.75% gives \$26,282.00 which, added to the indicated deficiency in net railway operating income from mail of \$4,945.00, brings the total claim of the carrier for increased compensation to \$31,227.00. To meet it upon the basis of 1931 operations would require an increase in compensation of 8.40%."

The COMMISSIONER: What is this you are reading from?

Mr. HITT: I am reading from the Commission's decision.

The COMMISSIONER: I see. That is all right. You speak about a joint study. Is that joint study in evidence?

Mr. HITT: Yes, sir.

The COMMISSIONER: Why do you not turn to the joint study?

Mr. Hitt: The joint study sets forth a good many different exhibits, and that is a summary of it.

The Commissioner: Is there not a finding in the joint study that reaches that conclusion?

Mr. Hitt: I do not know that we can find that figure

in the joint study. As I recollect, what happened was that

The Commissioner: As you read this, while they use the word "claim", it appears to be talking about the facts, because they say:

The total investment in roads, excluding unrelated items, was \$15,864,462.00. Of this, 21.44%, or 94 \$3,400,578.00, was apportioned by the Department to passenger-train service. The part of the latter amount apportioned to mail upon the adjusted space ratio was \$438,803.00. The total investment in equipment, less depreciation, allocated to the passenger-train service was \$135,257.00, approximately 10% of the total. Of this amount, \$18,279.00 was allocated and apportioned to the mail service. The total payment in ~~road~~ and equipment allocated and apportioned to mail was \$457,082. A return upon this computed at 5.75% is \$26,282.00, which added to the indicated deficiency in net railway operating income from mail of \$4,945.00, brings the total claim of the carrier for increased compensation to \$31,227.00.

Mr. Roof: I have no objection to what the Interstate Commerce Commission's opinion says. I do not think the Interstate Commerce Commission found that the statement made by Mr. Hitt, which he read from his printed statement—that the I.C.C. found the mail failed to pay a fair share of the operating expenses.

Mr. Hitt: In any event, Mr. Commissioner, the figure

we are talking about at this time is that figure on Page 8.

The Commissioner: The trouble is with the form of your question. Ask him to assume certain things, and to fix his ratio.

By Mr. Hitt:

Q19. All right, Mr. Todd, assuming that the sum of \$31,227.00 was necessary as an increase to pay the mail's share of the operating expenses and 5.75% return upon the proportion of the investment used for the mail service, can you translate that amount into the rates which would be needed to produce enough revenue from the mails in the year 1931, to pay just and reasonable compensation; and what should those rates have been, as compared with the rates which have been paid?

9. The rate which has been paid on 15-foot railway post-office car units was only 14 cents per mile whereas it should have been 27.17 cents per mile.

The rate which has been paid on the so-called three-foot closed pouch units was only 4.5 cents per mile, whereas it should have been 8.22 cents per mile.

Q20. What is the practice with respect to the application to subsequent years of the rates once established upon the basis of these joint cost studies in a particular first period year?

A. The general practice is for the rates, once established, to continue in effect in subsequent years until a petition is filed by a carrier or carriers or by the Post Office Department.

Mr. Roop: This is irrelevant, because this case is being brought contrary to the general practice.

The general practice in a rate proceeding is to fix the rate on the basis of a department study and then set that rate, as the Commission said, really prospectively.

The determination of this proceeding on the principles of a common carrier rate fixing, I take it, would give the Plaintiff no recovery; and it has suggested that the Plaintiffs are bringing this suit not as a common carrier rate proceeding, but to seek recovery for the condemnation of property.

In other words, if this was a suit by the carrier for additional compensation above that already paid for the shipment by the Government of a carload of ammunition at the established rates, that, according to the Plaintiffs, would be a different sort of case from the proceeding as it is actually being prosecuted by the Plaintiffs.

Is that not right, Mr. Hitt?

Mr. Hitt: I do not know that I quite follow your thought there.

The point with us is that we want to give the Commission more than one way of arriving at the value of the property taken.

Page 39:

Now, the joint cost study in 1931 gives us the starting point; that of the rate to be applied. Now, with the succeeding years, the volume of mail traffic varied, and by carrying the rate forward, as is customarily done, we can arrive at a figure showing the value of the services, if we apply the rates which would have been established under the 1931 cost study, to meet the increase that was indicated of \$31,227.00.

The Commissioner: I think there may be some merit to the Defendant's contention, but this may be, and probably is, directed towards the earlier suggestion, namely, that it will have an influence on connecting up the study of 1931 with the later years; and for that reason, I will overrule the objection.

The Witness: I continue my answer. The only indication that the old rates are no longer acceptable, for a re-examination and revision of rates.

By Mr. Herr:

Q21. As a result of the study made by other carriers, especially in the Southeastern territory, with respect to the rates which were established by the Interstate Commerce Commission at its order of July 28, 1928, 144 I.C.C. 625?

A. As a general rule, the rates established by the Commission's order of July 28, 1928, have been applied to each subsequent year.

Page 10:

in the Southeast, and by the carriers generally, with few exceptions.

Q22. Do you know of any exceptions?

A. The only exception I know of in the Southeast is in our own case where we recorded our dissatisfaction with postdating on April 1, 1931, for a re-examination, though, even in our case, in the meantime, the Post Office has continued to make payments to us at those old rates, which we have accepted merely as payments on account.

Q23. Had the rates of 25.11 cents per mile for post office apartment car service and 8.33 cents for three foot closed police service been in effect on and after April 1, 1931, can you tell us what should have been paid to the Receivers of the Georgia & Florida for mail service?

A. I have here an exhibit which shows the miles of service performed, the amounts paid by the Post Office Department at the old rates, and the amounts which should have been paid at the rates which the joint cost study showed to be needed, and the difference between the two, which has not been paid.

Q24. Does the difference in the last column represent the amount which would be necessary to provide the additional compensation from April 1, 1931, to February 28, 1938, needed to pay just and reasonable compensation to the Receivers if measured on the basis of the joint cost study in 1931?

Page 11:

A. Yes. That is correct.

Mr. Herr: We offer his exhibit as Plaintiff's Exhibit No. 5.

By Mr. Room:

Q26. Who made this up?

A. It was made by Mr. Thompson, under my supervision and direction, from the records in these exhibits.

Q27. Who is Mr. Thompson?

A. Mr. Thompson is here present.

Q28. When the table says "rates that should have been" and "what does that mean?"

A. These rates are the ones to which I have testified, or the old rates increased by 8.4%, as the increase indicated that we needed in this 1931 cost study.

Mr. Room: No objection.

The COMMISSIONER: It will be marked as Plaintiff's Exhibit No. 5, and admitted.

By Mr. Hurt:

Q28. Mr. Todd, have you any other study to demonstrate the amount necessary to pay just and reasonable compensation to the Receivers of the Georgia & Florida Railroad for the period April 1, 1931, to February 28, 1938?

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A. Yes. You understand that while the Receivers would have been willing to accept compensation at rates indicated to be needed by the joint cost study in 1931, about which I have just testified, we do not feel that we are now limited to that basis, and I want to point out why.

Q29. Please do so.

A. An exact allocation of expenses to several different railroad services is a matter of considerable intricacy and difficulty, and the basis for joint cost studies as worked out between the Post Office Department and Committees of carriers under the sponsorship of the Interstate Commerce Commission, represents a compromise by the railroads upon a method by which they would be willing to be governed in arriving at an approximate determination of the cost of handling the loads which would not be disputed by the Post Office Department.

In my opinion, the Post Office Department would certainly not agree upon any formula or basis of ascertainment, the effect of which would be to pay the carriers more than just and reasonable compensation; hence, in my opinion, the formula and bases customarily employed in the joint cost studies represents something less than the maximum to which the carriers might be entitled.

Q30. Is that true in respect to the determination of compensation for the Receivers of the Georgia & Florida?

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A. Yes; and taking the formula as a whole, I am of the opinion that the Receivers of the Georgia & Florida

are entitled to substantially more than the amount indicated by the 1931 joint cost study to be needed.

Q31. Please proceed.

A. Since the Commission failed to give any effect to the results of the 1931 joint cost study, but instead arbitrarily held us to the rates previously prescribed for large Class 4 systems, like the Pennsylvania Railroad, we feel relieved from any obligation to continue our claim of the amount indicated by the 1931 joint cost study; and have made a further study on another basis, which we submit is a better measure of the amount to which we are entitled as just compensation.

Q32. Are you now prepared to present the new base upon which you rely for the determination of the full amount of just and reasonable compensation which the Receivers claim?

A. Yes.

Q33. Please proceed to do so.

A. The two major objects of my new study are the same as the similar objects of the so-called joint cost study, namely, first, to determine what part of our railway operating expenses is properly apportioned to mail services; and, second, to determine what part of the value of our property devoted to transportation is properly apportioned to the mail service.

Page 61:

Taking up first the operating expense apportioned to mail service:

The first step is to separate the operating expenses between freight and passenger operation, and for this separation I have used the same separations as were reported to the Interstate Commerce Commission in our annual reports for the years 1931, 1932, 1933, 1934, and 1935, in accordance with their rules for so doing. For 1936, 1937, and 1938, I have used the operating ratio in 1935 developed from the separation of freight and passenger expenses in 1935. I will defer for the moment the explanation of this difference.

The best basis in my opinion for the apportionment of railway operating expenses to every class of passenger train service performed by the Georgia & Florida is that of linear car foot miles, so I now present my exhibit showing how the linear car foot miles for each class of service have been developed.

Mr. Hurn: We now offer this exhibit, consisting of some 45 pages, it being an exhibit showing the development of the linear car foot mile, etc., for the period April, 1931, through February, 1938, as Plaintiffs' Exhibit No. 6.

By Mr. Roe: Off the record, please.

(Here followed a discussion off the record.)

Page 15:

By Mr. Roop:

Q34. Who made up this Exhibit No. 6?

A. It was made by Mr. J. W. Roberts and Mr. O. Thompson, under my supervision and direction.

Q35. You, personally, vouch for the accuracy of the calculations contained

A. Yes, sir.

Q36. And the items set forth?

A. Yes, sir.

Mr. Roop: No objection, subject to the reservation to the Defendant of the right to cross examine with regard to this exhibit, and others which I see forthcoming, and also Exhibit No. 5, on the same items, which the Commissioner has granted us in respect to the cost study data contained in Exhibit No. 1.

The Commissioner: That is so understood, and Exhibit No. 6 is admitted.

102 *Procedure and Statements of Commissioner and
of Counsel on this Record of the Hearing
on February 11, 1916*

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ANDREW G. THREADGILL, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination by Mr. Roop:

Q1. Mr. Threadgill, state your name and your address to the Reporter.

A. Andrew G. Threadgill, Assistant Superintendent at Large, Railway Mail Service, assigned to the Bureau of the Second Assistant Postmaster General.

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Q11. You are generally familiar with the physical location of the Georgia & Florida Railroad, are you?

A. I am; yes, sir.

Q12. You have been acquainted with the service that railroad has been performing for the Post Office Department, have you?

A. In general.

Q13. Yes.

A. Not in detail.

Mr. Roop: I now offer for the records an exhibit.

The Commissioner: Defendant's Exhibit 1.

The Witness: This is the line of the Georgia & Florida Railway (indicating).

The Commissioner: Before he begins to discuss that. Any objection?

Mr. Herr: No objection.

The Commissioner: It will be admitted.

(Post route map of Georgia was marked "Defendant's Exhibit No. 1," and made a part of the record.)

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By Mr. Roon:

Q14. Will you describe this sheet, this map which I show you?

105 A. This is a post route map of the State of Georgia which shows the railroads which carry the mail, and the routes over which star route service is authorized, and in some cases rural delivery routes.

Q15. Will you explain what you mean by the term "star route" for the record?

A. A star route is mail service to be performed under contract which is let to the lowest responsible bidder, and the primary purpose of it is to carry mail from one post office to another.

Q16. And will you describe what you mean by rural delivery or R.F.D. routes?

A. Rural delivery is service performed by an employee of the Post Office Department, and its principal purpose is to deliver mail to patrons.

Q17. Does your map show the route of the mail service on the Georgia & Florida Railroad?

A. It does.

Q18. And how have you identified that?

A. It is marked in blue.

Q19. The blue line, then, shows the route of the railway post office from Augusta to Valdosta?

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(Page 129)

Threadgill—Direct.

A. That is right.

Q20. And the continuance of the route to Madison, Florida?

A. It does.

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Q24. Well, now, let's start at Augusta. Do you have other mail routes by railroad coming into Augusta?

A. We do.

Q25. Will you tell what they are?

A. The Augusta & Atlanta R.P.O., which is the Georgia railroad; the Charlotte & Augusta R.P.O., Southern Railway; Branchville & Augusta R.P.O.

Q26. Branchville is in what state?

A. South Carolina.

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Q27. And what railroad is that one?

A. Southern Railway.

Q28. Yes.

A. The Wilmington, North Carolina & Augusta R.P.O., which is the Atlantic Coast Line; the Augusta & Point Royal R.P.O., which is the Charleston & Western Carolina; the Augusta & Savannah R.P.O., which is the Central of Georgia Railway; the Augusta-Madison R.P.O., which is the Georgia & Florida.

By Mr. Roop:

Q29. Do you also have star routes into Augusta?

A. We do.

Q30. Can you tell what they are?

A. I wouldn't be able to name all of them without referring to records.

Q31. Name the principal ones that come to your mind.

(Page 132)

A. We have one, Sandersville to Augusta.

Q32. Now, Sandersville is in what state?

A. Georgia. Sandersville, Georgia, to Augusta.

Q33. And is that marked on this map?

A. That is marked in red.

Mr. Roop: For the record, I will mark that with an "A" and I will put the "A" just over the word "Gibson", to identify that route.

By Mr. Roop:

Q34. Can you name some more star routes out of Augusta?

108 A. We have one, Augusta to Millen, Georgia. We have one between Augusta and Midville, Georgia.

The Commissioner: While you are marking the map, you had better get it into the record each time that you do it.

Mr. Roop: Yes. I have just marked the route to Millen with a "B" and the route to Midville with a "C".

The Witness: There are other star routes into Augusta, but I am not able to name all of them without referring to records.

By Mr. Roop:

Q35. And the ones that you have named are typical, I suppose?

A. They are.

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Q96. Now will you state the post offices after Midville—just name them—which have alternative service?

121 A. Swainsboro, Wesley, Vidalia.

Q97. What does Vidalia have?

A. It is supplied by the Savannah & Montgomery, Alabama, Railway Post Office, the Seaboard Air Line Railway and by the Macon & Vidalia Railway Post Office, Macon, Dublin & Savannah Railroad.

Mr. HERR: May I ask as to what point this testimony is addressed, what it is you are trying to establish, that you are trying to show?

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Mr. ROOD: It will show alternative service available in all these points at the same rates or at cheaper rates and that in fact railroads voluntarily cut their rates below the I. C. C. rates in order to get this business, as it is so profitable to them.

The COMMISSIONER: Do you mean that a railroad running from Savannah to Atlanta is an alternative service for one running from—

Mr. ROOD: Oh, certainly.

The COMMISSIONER: —Augusta down to—

Mr. ROOD: Yes, indeed; the mail service is.

The COMMISSIONER: You mean they take the mail all the way down by Savannah just to get a little cheaper rate?

Mr. ROOD: Oh, the mail service is a complete network as is shown here.

The COMMISSIONER: That is not answering my question.

I am asking whether a particular service within—
122 that goes back—rather, whether a roundabout service is an alternative—as, for example, down around Savannah and back up to Augusta—is an alternative service for direct routes where there is no emergency. Of course, it could be shipped via Key West if it had to be done.

Mr. ROOD: Well, all-right.

By Mr. ROOD:

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Q98. Mr. Thwagill, suppose there were no Georgia & Florida Railroad mail from Montgomery, Georgia to Augusta. In that case would it be possible to move mail from Montgomery to Augusta?

A. Do you refer to Vidalia, Georgia, instead of Montgomery?

Q99. No. I am just talking about Montgomery. Isn't that the—

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Threadgill—Direct.

Q36. Typical in their physical nature, at least. Is the service furnished by truck?

A. I do not have a record of the equipment used. I would assume that it is furnished by truck.

Q37. It is furnished over public highways?

A. It is.

Q38. Is it furnished by independent contractors instead of by the Post Office Department itself?

A. It is.

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Threadgill—Direct

By Mr. Roof:

Q41. That is, is mail loaded on at Augusta, or does the train start out empty of mail?

A. Mail is loaded into the car at Augusta, taken in by the Railway Postal Clerk.

Q42. How, in what form, is the mail? What sort of packages? Is it pouches?

A. It is in pouches and sacks. In some cases parcel post is outside of sacks.

Q43. And where does that mail come from?

A. That mail comes from Augusta, Georgia, Post Office and from various lines centering at Augusta.

Q 44. And where is the next post office stop?

A. The first post office out of Augusta going south

(Page 135)

Threadgill—Direct

Gracewood, Georgia. At that point the clerk would deliver the mail for Gracewood in a pouch or sack, or possibly all in one pouch.

Q48. Is there any other way by which mail can be moved from Augusta to Gracewood?

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A. There is.

Q49. What is it?

A. By star route.

Mr. Roof: I will underline "Augusta" on my map in blue; I will underline "Gracewood" in blue. That is in Exhibit A.

By Mr. Roof:

Q50. What is the next post office stop after Gracewood?

A. Hephzibah, Georgia.

Q51. What happens there?

A. The clerk delivers the mail for Hepzibah in pouches or sacks.

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Q60. Is there any other way of moving mail between Augusta and Keyville except the Georgia & Florida Railroad?

A. There is.

Q61. How?

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A. By star route.

111. By Mr. Roop:

Q62. Is star route as efficient from Augusta to Keyville as the Georgia & Florida Railroad is, as far as the post office is concerned? Is the star route as satisfactory?

A. That is not a fair question?

Q63. Off the record: meaning what?

The COMMISSIONER: Well, you better get that on the record, in view of his answer.

The WITNESS: He asked if the mail could be—is this off the record?

The COMMISSIONER: No. On the record because your answer, "This is not a fair question", is on the record, and that ought to be explained, I think.

The WITNESS: A star route is as efficient in moving the mail as the railroad. The advantage in having service by railroad in this case is that mail may be taken into the car in bulk at Augusta and distributed by the clerk before reaching an intermediate office.

The COMMISSIONER: By "distributed" you mean assorted?

The WITNESS: Assorted, if that word is more clearly understood.

The COMMISSIONER: I think a layman may be confused. A layman doesn't understand the post office terminology.

Mr. HITT: When you say that it is not a fair question,

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112. you mean that you were comparing unlikes? That is to say, you are talking, in the instance of the star route, of just hauling just so much weight of mail; where as in the case of the railroad you are talking about hauling a traveling post office?

The WITNESS: That is right.

Mr. HITT: Yes.

By Mr. Roon:

Q64. I am limiting my questions just to the post offices that we have mentioned so far: Gracewood, Hephzibah, and Keysville, and I ask you if the post office use the star route to those points from Augusta as freely as it would the railroad.

A. It does.

Q65. Why do they have a

The COMMISSIONER: That answer is clear, it is a direct answer, but I don't know what you mean by if they use it as freely. That doesn't convey any significance to me.

Mr. Roon: All right.

The WITNESS: I answered that with the question as I understood it.

The COMMISSIONER: Yes.

By Mr. Roon:

Q66. By "freely" I mean do they use the star route and the railroad interchangeably?

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A. They do. At certain times during the day they dispatch mail over this star route. At other times they dispatch mail by the railroad.

Q67. Why do they have a star route if they have a railroad?

A. Because the railroad doesn't provide the operation of trains at times which would give satisfactory service to the post offices and patrons involved.

114 The COMMISSIONER: You mean there are not enough trains per day?

The WITNESS: I attempted to say that trains are not operated at the time which would give satisfactory service to the post offices and patrons.

By Mr. Roon:

Q68. Now, who decides, when the trains go—the post office or the railroad?

A. You mean when the train leaves Augusta?

Q69. Yes. Who fixes the timetable?

A. The railroad company.

Q70. Oh, I thought the post office did. Is that wrong?

A. Oh, no; the post office department has no control over railroad schedules.

Q72. What is this point I am pointing to on the map?

A. Blythe, Georgia.

Q73. Is that a post office?

A. It is.

Q74. Between Hephzibah and Keysville?

A. That's right.

Q75. And does this train serve Blythe?

A. It does.

115 Q76. And is there alternative service to Blythe?

A. There is.

Q77. All right. Now, what is the next post office that the train serves after Keysville?

A. Gough, Georgia.

Q78. And how big a place is that?

A. I am unable to answer that question.

Q79. All right. What is the next one after Gough?

A. Vidette.

Q80. And then?

A. Rosier.

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Q81. Now, do Gough and Vidette have mail service in addition to the railroad train?

A. They do not.

Q82. They do not?

A. So far as I know.

Q83. They do not so far as you know. And does Rosier?

A. It does. It is supplied by R. F. D. from Midville.

Q84. And is Midville the next post office stop on the train after Rosier?

A. It is.

116 Q85. And does Midville have alternative service?

A. It does.

Q86. By what?

A. By the Atlanta & Savannah R. P. O. and the Central of Georgia Railway.

Q87. Is there a star route there, too?

A. There is.

Mr. ROOD: That is the route that we marked "Route C" from Augusta to Midville.

By Mr. ROOD:

Q88. What is the next post office after Midville?

Mr. HITT: Mr. ROOD, may I ask if you are going to take every station along the line?

Mr. ROOD: Right.

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Mr. HITT: Well, I object to this.

The COMMISSIONER: What are you going to prove by taking every station?

Mr. Herr: That is what I want to know.

Mr. Roop: Value of services, comparable services alternatively available, market in the region.

117 Mr. Herr: Do you wish to say that you will prove what it is you are trying to show?

Mr. Roop: My witnesses will show it.

The Commissioner: Now wait a minute. You are trying to show alternative services available?

Mr. Roop: Surely, at lower prices.

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Mr. Herr: Well, it is still objectionable. I object, Mr. Examiner, that this is immaterial and irrelevant. He is trying to compare two entirely different propositions. One is the handling of a railway post office in which there is a postal clerk, where he assort the mail; and the other

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is a question of hauling so much weight in sacks, or something of that sort, from one point to another.

Mr. Roop: Well, the comparativeness is argumentative. He will compare them.

The Commissioner: Let me ask you this: What is the nature of—is it true that these star routes you are talking about are not traveling post offices, but simply carry sacks of mail from one place to another?

Mr. Roop: Yes, carry sacks of mail from one place to another; and the mail, instead of being sorted in transit, is sorted at each post office.

The Commissioner: And the facilities in the star route are the body of a truck?

118 Mr. Roop: The body of a truck, plus drawing up to the post office and stopping and letting the postmaster take the pouches marked for him, which have been very carefully contrived and arranged so as to give a minimum sorting.

The Commissioner: Objection sustained.

Mr. Roop: Objection to what?

The Commissioner: Objection to this questioning as to every town, whether there is a star route and whether or not it is available.

Mr. Roop: My witness's last statement was that there was an alternative railroad route at Midville.

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The Commissioner: I did not understand that.

Mr. Roop: Atlanta-Savannah Post Office R. P. O.

Mr. Hitt: I object to this line of questioning as being irrelevant and immaterial.

The Commissioner: All right. Now let us take the question as to the Atlanta Railroad, and let's see what that is, see whether they give the same kind of service, whether it is—

By Mr. Rood:

Q89. Tell us about the Atlanta-Savannah post office and the service it performs at Midville. What railroad is it run on?

A. The Central of Georgia Railway.

The Commissioner: From?

By Mr. Rood:

Q90. From where to where?

A. Atlanta to Savannah.

Mr. Rood: Does the court take judicial notice that Atlanta and Savannah are the two biggest towns in the State of Georgia?

The Commissioner: I presume it will, if it is material.

Mr. Rood: It is material in that it has to do with the current and flow of mail traffic.

The Commissioner: Very well. Let the witness

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proceed and point out wherein the services are comparable; and we will see whether they are comparable.

120 The Witness: Midville receives its mail—part of its mail from trains operated on the Atlanta and Savannah R. P. O. That is the railway post office.

By Mr. Rood:

Q91. Is that 15-foot space?

A. No.

Q92. What is it?

A. They have 30-foot apartment cars in the trains operated between Atlanta and Savannah; that is, 30 linear feet.

Q93. And how many trains stop at Midville?

A. Four.

Q94. Four.

A. On the Atlanta & Savannah line.

Q95. Incidentally, what is the test you make which leads you to operate 15-foot R. P. O. space or 30-foot R. P. O. space? That is, why do they run 30-foot post offices on the Atlanta-Savannah line and only 15-foot post offices on the Augusta-Madison line?

A. Because the volume of mail handled is greater.

Mr. Rood: This is Montgomery County. Vidalia is what you are speaking of.

The COMMISSIONER: The point I am getting at is this:

Mr. Rood: Oh, I beg your pardon. I do refer to Vidalia, yes.

The COMMISSIONER: The point I am getting at is this: You are trying to make a comparison of the value of a service around by way of Savannah with the direct service through to Augusta by the railroad here in question, on the theory, I presume, that in a suit for the value of land you possibly might be permitted to show the value of comparable land, and it is your position—

Mr. Rood: Adjacent.

The COMMISSIONER: And it is your position, around by way of Augusta is comparable—or around by way of Savannah is comparable to the direct route to Augusta; is that it?

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Mr. Rood: Strictly—

The COMMISSIONER: Is that it?

Mr. Rood: Yes, sir.

The COMMISSIONER: Yes. Well, I will sustain an objection on the ground that they are not comparable.

123 Mr. Hitt: I object on the ground they are not comparable. Star routes are not comparable, and the alternatives by rail are not comparable.

The COMMISSIONER: It is very doubtful. Many jurisdictions reject proof of value of comparable properties in any event, but here I sustain the objection that they are not comparable.

Mr. Rood: Yes. I except.

By Mr. Rood:

Q100. Mr. Threadgill, suppose you had a parcel post package going from Vidalia, which is in Montgomery County—I had those two names mixed before, on the map here—from Vidalia to Washington, D. C., could that move on the railway mail train to Augusta?

A. It could.

Q101. Could it move on the railway mail train to Savannah?

A. It could.

Q102. Either way?

A. It could.

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Q103. As a matter of fact, which is the most frequent service?

A. Well, the Savannah-Montgomery R. P. O. has only one train in each direction at present. They have had more

frequent service, but at present they have only one train in each direction.

Q104. Well, the timetable here shows a trip out of Vidalia at 5:20 p.m. Is that what you refer to?

A. That is one of the trains on the Savannah and Montgomery R. P. O.

Q105. And then I see a trip from Vidalia to Savannah at 7:20 a.m. What is that?

124 A. That is star route service.

Mr. HERR: Mr. Commissioner, I object to this. A. Sustained.

Mr. ROOD: Well, your Honor, if we can't prove market value by the value of adjacent comparable properties, we are in a bad spot here.

The COMMISSIONER: I told you it was my view of it that they are not comparable services. At the time those trains were running the others were not comparable because they were much further around, going to different places. You have to go into the whole setup and organization of the other railroads to show if there is a comparable situation.

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Mr. ROOD: Well, I say, now, on a parcel post shipment from Vidalia to Washington, D. C. My witness says they can go equally either way.

The COMMISSIONER: He just didn't say they go equally. He said he didn't ship them from one place over the route that could be shipped the other way. He didn't say there was an equal choice at the time the trains were running.

By Mr. ROOD:

Q106. Well, Mr. Threadgill, which is a preferable route from Vidalia to Washington, D. C., for a parcel post shipment?

A. It would depend on the time the parcel is placed in the post office.

Q107. Do you mean to say it would go on the next train, generally speaking, as a rule?

125 A. Not always.

Mr. HERR: I object to that. I don't see where that leads us anywhere.

Mr. ROOD: Well, if the only difference is the trains go at different times, that is comparable.

Mr. HERR: It is true that if a town isn't served by one line of railroad, why, the government can serve it by another line of railroad or by a star route to get it there somehow. There are no insuperable difficulties to keep them.

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from getting mail to a town by star route; but when it comes to these services by traveling post offices, why, they have a post office where they can assort the mail en route and distribute it as they like, going down another line of road to various and sundry towns.

Mr. Rood: My witness didn't say that the Vidalia Savannah route is a traveling post office.

Mr. Hitt: Yes.

The COMMISSIONER: But the other post office cannot possibly serve the towns which this one is serving. Yes, it can serve Washington, D. C., and it can carry distance between certain terminal points, but it cannot possibly serve the towns in between, and that is the reason they have got it.

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Q109. Mr. Threadgill, now if there were no Georgia & Florida Railroad, what would the post office do to move mail from Vidalia to Washington?

Mr. Hitt: I object as being irrelevant and immaterial.

The COMMISSIONER: Objection sustained.

By Mr. Rood:

Q110. What would it do to move mail to Augusta?

Mr. Hitt: I also object to that.

The COMMISSIONER: Objection sustained.

Mr. Rood: To Augusta?

The COMMISSIONER: Yes.

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Mr. Rood: And, I except to the Commissioner's rulings, respectfully. As it understood that exception is reserved?

The COMMISSIONER: You have a right under the rules to except; you don't have to get any permission. However, if you want to gain anything by it you better make an offer of proof.

Mr. Rood: Do I have to note the exceptions each time?

The COMMISSIONER: Yes, each time you should note it.

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Mr. Rood: Yes. All right.

I now offer to prove that, if the Georgia & Florida Railroad ran no mail trains at any time from 1931 to the present the buyer of the mail service on that railroad (that is to say the Post Office Department) would be able to employ adequate alternatives at a financial saving, to move mail out of Vidalia to any point in America served by any other railway route or star route or R. F. & D. route.

Mr. Herr: I object to that, being irrelevant and immaterial.

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Q111. The next post office after Vidalia is what?

A. Alston.

Q112. Alston. And the next one after that?

A. Uvalde.

Q113. Do they have alternative service?

A. They do.

Q114. In the form of star routes?

A. They do.

Q115. The next one is what?

A. Hazlehurst.

The COMMISSIONER: These star routes are the trucks you are talking about?

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Mr. Rood: Yes, just defining physique.

The COMMISSIONER: All right.

128 Mr. Rood: We will take up the value of it a little later.

The COMMISSIONER: Well, I want to be sure what they are, so it shows.

Mr. Rood: Yes. Star routes.

By Mr. Rood:

Q116. The next station is Hazlehurst, you said?

A. That is right.

Q117. Now, Hazlehurst has another railway route, I believe, that is shown on the map. What route is that?

A. That is the Atlanta & Jacksonville R. P. O.

Q118. With how many trips daily?

A. Two trips each way per day.

Mr. Herr: Now let me—I thought the objection went to all of that had been ruled out. I thought this testimony of ten minutes more was something else. I didn't know it was going back and putting in the same thing after getting it ruled out.

The COMMISSIONER: Well, if it is the same thing I certainly—

Mr. Rood: I have about eight more stations.

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The COMMISSIONER: Oh, well, but is it the same thing exactly?

Mr. Rood: The general physical description of this route, what it connects with and—

The COMMISSIONER: If it is for the purpose of showing that there are star routes and that the mail might have been shipped over the star routes instead of by this service, that subject has been ruled upon, and that is what I want you to make a general offer of proof upon.

By Mr. Roob:

Q119: Well now, what does the clerk do at Hazlehurst on this train, Mr. Threadgill?

A. On the Georgia & Florida train?

Q120: Yes.

The COMMISSIONER: Well, he testified to that in the beginning of his examination; he said that he opened up some of the mail bags; he distributed the mail.

By Mr. Roob:

Q121: What does he do when he gets to Hazlehurst?

The COMMISSIONER: To Hazlehurst?

Mr. Roob: Hazlehurst, yes. Hazlehurst is an important connecting point with divergent routes.

The COMMISSIONER: He did not testify specifically to that, although he did testify that the clerk sets bags out at the door

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of the car, where they are picked up by somebody else outside.

Mr. Roob: Yes, all right.

130 Q122: Where do the bags go at Hazlehurst that he sets out at Hazlehurst?

A. He puts off bags for the Hazlehurst post office and for connection with Atlanta and Jacksonville trains.

Q123: Those are other trains that run through there that have a railway post office that does connect?

A. They do.

Mr. Roob: Objection?

Mr. HITT: My main objection is just the time he is taking.

Mr. Roob: Well, I said ten minutes.

Mr. HITT: Well, it is as quick, I guess, to let you go ahead and put that junk in, and to keep on fussing over it.

Mr. Roob: If this route is unique, why, we have got to have the most careful description of what it does, if possible, if we are going to put it in a glass house or a tower of ivory.

By Mr. Roob:

Q124: After Hazlehurst the next post office is?

A. Denton, Georgia.

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Threadgill—Direct:

Q125. I see from the map that Denton has an R. F. D. service from Hazlehurst: is that correct?

A. That's right.

Q126. And why is that?

A. Because the trains operated over the Georgia & Florida do not provide satisfactory service to the post office and patrons.

Mr. HERR: When you say "satisfactory service," you mean service that may be different hours of the day or often or frequent, and that is the sort of thing you are talking about?

The WITNESS: I mean by "satisfactory service" that they don't provide service at the time people want their mail. Is that clear?

Mr. HERR: Partially. That isn't the only thing that enters into satisfactory service, though. Isn't frequency an element?

The WITNESS: It might be. Frequency is an element.

Mr. HERR: Yes. In other words, you have only service one way each day by railroad; and if the people want oftener service than that or different hours, why, naturally they can get it by establishing a star route.

The WITNESS: That is correct.

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Q127. The next post office is?

A. West Green.

Q128. After that?

A. Douglas.

Q129. What happens when the train gets to Douglas?

A. At Douglas mail is dispatched for the Douglas post office and received from the Douglas post office; also may be dispatched for connection with the Atlanta & Waycross R. P. O.

Q130. The Atlanta & Waycross R. P. O. being a—

A. It is on the line of the A. B. & C. Railroad: Atlanta, Birmingham & Coast.

Q131. Yes. And it runs between what points?

A. Between Atlanta and Waycross, Georgia, and one

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set of trains between Atlanta and Brunswick, Georgia.

Q132. Yes. Between Douglas and West Green the map shows a star route—shows an R. F. D. also; is that correct?

133 A. That's right.

Q133. Now, after Douglas, the next post office stop on our train is what?

A. Willacoochee.

Q134. What happens there?

A. At that point mail is delivered to and received from Willacoochee post office and may be received from or dispatched to trains of the Waycross & Albany R. P. O., which is on the Atlantic Coast Line Railroad.

Q135. Is this Waycross & Albany route part of a joint route between Atlanta and Jacksonville?

A. Through trains operate from Atlanta to Jacksonville over the Central of Georgia and the Atlantic Coast Line on this track.

Q136. Isn't that also true of the route that connects at Hazlehurst?

A. Yes, through trains operate between Atlanta and Jacksonville over that line.

Q137. And is it also true of the route that connects at Douglas?

A. I can't answer that question.

Q138. All right.

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A. No through mail trains operate there.

Q139. All right. The next stop after Willacoochee is what?

A. Nashville, Georgia.

Q140. Yes. After Nashville?

A. Ray City.

Q141. Now, Nashville shows a star route running over to Adel; isn't that correct?

A. That is right.

Q142. Which is on what railroad?

A. Atlanta, Valdosta and Jacksonville R. P. O., which is the Southern & Florida Railroad at that point.

Q143. From Nashville down, the Georgia & Florida seems to parallel the Georgia, Southern, & Florida into Valdosta. Is that roughly correct?

A. Roughly. They do not touch at Nashville.

Q144. No. The next stop after Nashville you said was Ray City, I believe.

A. Ray City.

Q145. And then?

135 A. Then Barretts.

Q146. And do both of those have star routes?

A. Both of those are served by star route from Adel.

Q147. And the next stop after Barretts is Valdosta?

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A. Valdosta.

Q148. Which has what kind of service connect?

A. Which has service by the Atlanta, Valdosta & Jacksonville R. P. O., Georgia, Southern & Florida Railway; the Waveross & Montgomery, Alabama, R. P. O., which is the Atlantic Coast Line; the Valdosta and Palatka, Florida, R. P. O., which is the Georgia, Southern & Florida.

Mr. ROOD: At Valdosta I believe the R. P. O. service stops; is that not true, Mr. Hitt?

Mr. HITT: That is correct. It is called the Augusta and Madison.

Q149. Is there any similar run over the railroad from Valdosta to Madison?

A. We have mail service authorized but not by

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railway postal clerks.

Mr. ROOD: That doesn't appear on your map.
136 (The witness indicated on the map.)

Mr. ROOD: Well, the railroad appears on the map, but the star route does not appear.

The WITNESS: There is no star route between Valdosta and Madison, as far as I know.

By Mr. ROOD:

Q150. Well, now, you say you have service authorized between Valdosta and Madison, but—

A. On the Georgia & Florida trains, but not by railway postal clerks.

Q151. Oh, I see.. Well, what do you have?

A. Closed pouch station. We mean by that, pouches are closed and dispatched over the train for intermediate offices.

Q152. And is closed pouch service identical to star route service?

A. It is not identical. It is comparable.

Q153. Comparable. Comparable in what way?

A. In that mail is dispatched from one post office to another with approximately the same speed, but star routes deliver the mail to the post offices, whereas in closed pouch space the mail is delivered at the railroad station.

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Q154. Now, the description which you have made of what actually happens on the southbound train—is that generally descriptive also in reverse, of what happens on the northbound train?

A. Generally so.

Mr. ROOD: Generally so. Well, that is good enough. I have no further questions of this witness.

Mr. HITT: No cross examination.

The COMMISSIONER: Very well. You may be excused.

The WITNESS: Thank you.

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Mr. ROOD: I have an exhibit here. Mr. Threadgill is here. We could stick this in as our Exhibit No. 2, which will be a tabulation of what he said about R. P. O.'s.

Mr. HITT: Well, so far as holding him is concerned, I don't care to cross examine him on it. I object to it as being irrelevant, but—

Mr. ROOD: Yes.

The COMMISSIONER: Mr. Hitt, let us mark this Defendant's Exhibit 2.

(Tabulation of R. P. O. routes connecting with mail service on the Georgia & Florida Railroad was marked "Defendant's Exhibit No. 2," for identification.)

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Mr. HITT: I object to it on the ground it is irrelevant and immaterial.

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The COMMISSIONER: This appears to be in substantiation of testimony which already has been ruled upon and on which an objection has been sustained, so the objection to this is sustained on the same grounds.

Mr. ROOD: Exception is noted.

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CHARLES H. STEPHENSON, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination by Mr. Rood:

Q1. State your name and address and occupation to the Reporter, please, Mr. Stephenson.

A. Charles H. Stephenson. I am superintendent of the Division of Railway Adjustments, Post Office Department.

The COMMISSIONER: Adjustments?

The WITNESS: What is it?

The COMMISSIONER: Adjustments?

The WITNESS: Adjustments, yes. I have been in the Post Office Department for 35 years and connected with the mail.

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Stephenson—Direct

pay of railroad for that time.

40 By Mr. Root:

Q2. And you have been Chief of the Division of Railway Adjustments how long?

A. I have been Superintendent of the Division of Railway Adjustments for about two years, Assistant Superintendent for a year or so before that, and in the Department as Statistician for approximately thirty years.

Q3. Will you explain the function of the Division of Railway Adjustments in the Post-Office Department?

A. Our division has charge of the authorizations and pay to the railroad companies for the transportation of the mail, including the authorization and payment for power boat service and electric car service and mail messenger service, the air mail service from Alaska.

Q4. What is mail messenger service?

A. It is the transportation of the mail between post offices and railroad stations, and between railroad stations.

Q5. You mean railroad stations in the same town?

A. In the same town, yes.

Q6. Yes. Now will you describe the documentary procedure by which a railroad such as the Georgia & Florida Railroad gets a mail contract?

141 A. The Railroad Mail Service, that is, the Field Service of the Post Office Department, has control of the operation and the need of mail service on railroads and by other means. When mail service is necessary on a railroad, the railroad is requested to perform the service. They are authorized, usually—that is, in a great many cases the railroad seeks the service. We do not ask the railroad to put on additional cars or additional equipment for the transportation of mail, that is, except that which is regularly authorized from day to day. If the space that is needed for the transportation of the mail exceeds that which is regularly authorized, we do not compel a railroad to put on additional space just for that particular purpose. A recommendation is received from the field as to the units of space needed. That recommendation comes to the Post Office Department, to the General Superintendent of the Railway Mail Service, who either approves it or disapproves it, and then it comes to the Superintendent of the Division of Railway Adjustments for his approval or disapproval, after which it goes to the Second Assistant Postmaster General for his signature. Then it becomes a legal authorization.

Q7. You are referring to a document which you in the Post Office call an authorization?

A. Yes.

142 Q8. Do you have in your office the records of the authorizations issued to the Georgia & Florida Railroad?

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A. We do.

Q. Running as far back as the year 1928?

A. Yes, sir.

Q10. I hand you a folder of documents and ask you if you will describe just what those documents are, for the record.

A. These documents show the authorization of space on the Georgia & Florida Railroad beginning with July 10, 1928, and carrying through to, I presume, 1938. There are not very many changes on this road; therefore there are very, very few orders that are issued.

The COMMISSIONER: Are you going to offer that, Mr. Rood?

Mr. Rood: Just one further question:

By Mr. Rood:

Q11. Do you know why an order was issued on August 21, 1928?

A. Yes. That is putting into effect the order of the Interstate Commerce Commission dated July 10, 1928, which provides a rate: A general rate for railroads, of which this road is one.

143 Mr. Rood: Your Honor, the order of the I. C. C. to which he refers is cited in the Exhibit 1, at page 6, Defendant's Exhibit 1. That was the order giving a general increase in all railway mail rates, which was made effective from the date

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Stephenson—Direct

of the order. I offer this folder of documents for the record, requesting permission to withdraw and substitute copies, since these are original Post Office records.

Mr. HITT: No objection.

The COMMISSIONER: It will be omitted, and they may be withdrawn and photostatic copies substituted.

Mr. HITT: You will furnish us a set?

Mr. Rood: Oh, surely; photostatic copies.

The COMMISSIONER: In substituting photostatic copies be sure that they not reduced in size.

Mr. Rood: Yes, sir.

The COMMISSIONER: Sometimes we get a photostat and it is reduced so that it is very difficult to read.

Mr. Rood: This will be Defendant's Exhibit 3.

The COMMISSIONER: Three.

(Folder of documents, Division of Railway Adjustments, Post Office Department, was marked "Defendant's Exhibit No. 3," and made a part of record.)

144 The WITNESS: Off the record.

(Here followed a discussion off the record.)

Mr. Rood: Back on the record.

By Mr. Rood:

Q12. After this authorization has been issued and approved, what happens then, Mr. Stephenson?

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A. The railroads are given a copy of the notice of the authorization.

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Q15. After the authorization or this document is received by the railroad, I suppose they start supplying service in conformity therewith, and what is the next documentary step in the history of a particular case?

A. After the service has been performed they submit a bill to us, which we call an affidavit. They swear that this service has been—certain service has been performed in accordance with the authorization which they have received.

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Stephenson—Direct

which forms the basis of payment.

Mr. Rood: I ask that this folder of documents be 145 marked for identification as Exhibit 4.

(Folder of documents was marked "Defendant's Exhibit No. 4," for identification.)

By Mr. Rood:

Q16. I show you the documents marked as Exhibit 4, for identification, and ask you to describe them.

A. As I said before, this is a statement of service performed during—for a particular period, and this particular exhibit shows the bill for a three-month period. I will say this: That I wasn't able to get the affidavits for the larger runs of the road, for the reason that they were at Asheville, North Carolina, but for the purpose that we want to use them for I presume that these will be sufficient because they are similar. This shows the—

The COMMISSIONER: You say it is a three-month period?

The WITNESS: A three-months' period. Usually in the larger—

The COMMISSIONER: What period is that, Mr. Stephenson?

The WITNESS: Well, these run—this is for the quarter ending June 30, 1931, and, oh, various—various quarters subsequent to that.

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Stephenson—Direct

Q17. You are referring to a set of large documents which all appear to be identical in form. Now, on the back of those, at the back of the folder, there are some smaller documents attached. What are they, Mr. Stephenson?

A. Those are a part of the—those are similar to the rest of them.

Q18. All right.

A. They are all what we call affidavits, submitted for payment of service performed.

Mr. ROOD: I offer these for the record.

Mr. HITT: No objection.

The COMMISSIONER: They will be admitted. You wish, I suppose, to substitute photostats for those?

Mr. ROOD: With the same conditions.

The COMMISSIONER: Yes. Let them be fastened together securely, as Exhibit 4.

(Folder of documents; heretofore marked "Defendant's Exhibit No. 4" for identification, was made a part of this record.)

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(Here followed a discussion off the record.)

The COMMISSIONER: Very well. Go back on the record now.

147 Mr. ROOD: All right. Mr. Hitt, do you concede that the affidavits contained in Exhibit 4 are typical of all the affidavits furnished by your railroad and its receivers?

Mr. HITT: Yes.

Mr. ROOD: Covering all the service for which claim is made in this proceeding?

Mr. HITT: Yes, we are willing to stipulate that the other reports have been similar in character, in this same form.

Mr. ROOD: Let it be so stipulated by the defendant.

By Mr. ROOD:

Q19. Now, Mr. Stephenson, does the carrier compute the rates in these affidavits, or does the post office compute them?

A. The carrier computes them.

Q20. Well, now on what basis are the rates computed in these cases?

A. On the basis of the authorization.

Q21. And on what basis are the rates in the authorization made?

A. They are the rates established by the Interstate

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Stephenson—Direct

Commerce Commission.

148 Q22. Do these documents anywhere contain any protest or notation of protest by the carrier to the rates?

A. They do not.

Q23. Have you ever heard of any protest being made by this railroad about the rates to the Post Office Department, for services performed?

A. I would only say this: That in my conversation with the honorable attorney over there that he has indicated to me that they were not getting sufficient compensation.

The COMMISSIONER: I don't get your word. Sufficient or insufficient?

The WITNESS: They didn't get sufficient compensation.

By Mr. ROOD:

Q24. And that is all you ever heard of?

A. Yes.

Q25. You have never had any written complaint?

A. No.

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Q34. Well, now, you say they recommend the trains. Do you mean the Post Office Field Service plots out what it considers a good train schedule and instructs the railroad to run a train on that schedule?

A. They do not instruct the railroad to run any trains.

149 Mail service is performed on the trains that they operate; they don't operate any trains particularly for mail service.

Q35. Do you mean that the Post Office Field Service merely adapts its schedules to existing railroad train schedules?

A. That's right.

Q36. Have you ever asked this railroad to run a train which it wasn't?

A. Not to my knowledge. That would come under filed service. But I know they wouldn't do that. At least, I haven't.

Q37. Have you ever—

A. It isn't a policy of the Department to do it.

Mr. HITT: May I inject a question there, so that the Commissioner may come back to it?

The WITNESS: Yes.

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Stephenson—Direct

Mr. HITT: You do confer with the railroads on the changes in schedules, as to what will suit the convenience of the Department? You consult them, and they take that into consideration in fixing schedules?

The WITNESS: Oh, yes. That is right, Mr. Hitt.

150 Mr. HITT: And that is done on the Georgia & Florida?

The WITNESS: Yes.

By Mr. ROOD:

Q38. Have you ever ordered any railroad to run a train which the railroad said it did not wish to run?

A. We have not.

.

I show you Defendant's Exhibit 2. Will you state into the record the railroads which provide the service on all the routes listed in Exhibit 2, and state whether or not the rates paid them are on the same scale as the rates paid the Georgia & Florida Railroad?

A. These railroads listed on Exhibit 2 all receive

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the same rate of pay, with the exception of one road, and that—

The COMMISSIONER: Will you check that exhibit number? I have a notation that Exhibit 2 is a tabulation of bus routes.

The WITNESS: With the exception of the Macon, Dublin & Savannah Railroad.

151 By Mr. ROOD:

Q41. That is the Macon and Vidalia R. P. O. route?

A. Yes, Macon and Vidalia R. P. O. Now, that railroad receives the rate for separately operated railroad under 100 miles in length, which is a higher rate of pay.

Q42. Well, now, on those routes that are shown in Exhibit 2, I see Atlanta and Jacksonville R. P. O. furnished by the Southern Railway, with mileage 330. Down below I see Atlanta, Valdosta, and Jacksonville R. P. O. furnished by the Georgia, Florida & Southern Railway, with mileage 349. Now, do you pay for that local route a higher compensation on mail carried from Atlanta to Jacksonville?

A. We pay the shorter mileage. The company has agreed to equalize the mileage. The Central of Georgia and the Atlanta Coast Line equalizes with the Southern Railway.

Q43. Are there any other illustrations of equalization in Georgia?

A. The Central of Georgia equalizes with the Southern

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Stephenson—Direct

Railway between Atlanta and Macon, and the Atlantic Coast Line equalizes with Seaboard Air Line between Washington D. C., and Jacksonville, Fla.

Q44. Well, now,—

152 Mr. HITT: May I ask, what is the object of this line of questioning? Does this go to the same thing that was excluded yesterday, that there is no comparability between these routes?

Mr. ROOD: This shows that on R. P. O. service parallel railroads in the same place are willing to accept a still lower rate to get the business. The post office is under an obligation to pay the standard rates furnished by the I. C. C. Since that is so, the cheapest rate to the post office would be the short line; and lines which are longer than the short line, the cases just mentioned by Mr. Stephenson, voluntarily waive their rights to compensation for the mileage on their route which is in excess of the short line distance.

The WITNESS: That is for the through mail, through mail going over those lines only.

Mr. ROOD: Yes.

Mr. HITT: I appreciate what you are saying, Mr. Stephenson, and I object to the line of testimony because there is no line of comparability here with the Georgia & Florida. That is the ground of my objection.

The COMMISSIONER: The objection is sustained.

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Mr. ROOD: I offer to prove that other railroads operating mail routes carrying mail through the same towns which are served by the plaintiffs' routes are so anxious to get the

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business that they voluntarily come to the post office and offer to accept rates lower than the rates prescribed by the Interstate Commerce Commission. They do that by, I think, waiving compensation to mileage above the short line mileage.

By Mr. Roon:

Q45. Is that correct, Mr. Stephenson?

A. That is right.

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The COMMISSIONER: Very well. The objection is sustained. You may make your offer of proof.

Mr. Roon: Yes. I offer to prove through this and other witnesses that—

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The COMMISSIONER: Through this witness.

Mr. Roon: Through this witness, then: That if the post office decided not to ship mail over the Georgia & Florida Railroad, but used the Star Routes exclusively, and the other railway routes which were shown to serve every stop yesterday except two, that the post office would make an annual saving not only of the amounts paid the railroad for the R. P. O. and the closed-pouch service, but also all of the amounts shown in column 3 of Exhibit 6, and a large percentage, between a third and a half, of the amounts shown in column 4 of Exhibit 6.

Q59. Mr. Stephenson, how many times has this railroad asked to be relieved of the burden of carrying mail?

A. They haven't asked at any time to be relieved.

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JOHN D. HARDY a witness produced on behalf of the defendant, having been.

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first duly sworn by said commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination by Mr. Roon:

Q1. Mr. Hardy, will you tell us who you are and what you do?

The COMMISSIONER: Give your name for the record, first.

The WITNESS: John D. Hardy.

The COMMISSIONER: John D.?

The WITNESS: John D. General superintendent, Railway Mail Service, Post Office Department.

Q2. Mr. Hardy, how long have you been general superintendent?

155 A. Six years.

Q3. And who was your predecessor?

A. Mr. S. A. Cisler.

Q4. You say your title is superintendent of the railway
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mail service. Now, specifically, just give us a general description of what your job is, and what you actually do in connection with railway mail.

A. Well, the position of general superintendent, railway mail service, has supervision over all of the railway mail service throughout the country. That includes the personnel as well as the supervision of space on R. P. O. and closed-pouch trains; also the supervision of the division of Star Route service, which is a service rendered by contract entered into by means of advertisements for bids for four-year period of service. The Railway Mail Service is divided into 15 divisions with division headquarters, and each division is divided into chief clerk districts, and each chief clerk in his respective district has immediate supervision over the administration of the service in his respective division. He perfects the organizations of R. P. O. trains and of other organizations, he submits the recommendation for change in organizations, changes in space, in accordance with the I. C. C. rulings. As those recommendations come into the Department from the field, we examine them and pass upon them.

156 Q5. Now, Mr. Hardy, you, then, are in charge of all the planning for use of railroads by the post office in the entire country?

A. Yes, sir.

Q6. Yes. Now, how does the—what are the steps which
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lead you to decide to use a railroad for a mail route? I don't mean what are your mental steps, but what is the procedure when—does it start with negotiations, or where does the idea start, and how does it get to you, and what is your function?

A. Well, primarily all railroads are post routes, but as new railroads are built up or extended, the railroads make application to the Department for the establishment of a mail route on that extension or branch of the line.

For instance, the Seaboard Air Line a few years ago built a road from—into Miami.

Q7. That is in Florida.

A. New construction. And they made application to the Post Office Department for the establishment of a mail route over that portion of the new road; and it is our duty, jurisdiction, to consider the need or benefit of that service, the benefits to the public, as commensurate with the

cost to the Department, and either establish the route or deny the application.

157 Q8. Now, you are familiar with the railway service, are you—the railway mail service performed by the Georgia & Florida Railroad?

A. Generally speaking.

Q9. Can you recall when the question of the Georgia & Florida mail routes first came to your attention?

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A. In 1939, shortly after I became general superintendent.

Q10. Oh, I see.

A. There was a recommendation submitted by the field officials having immediate supervision of that service for a curtailment of the railway post office service over a portion of the route to be superseded by closed-pouch service. At that time the Department was making a survey of all minimum pay routes and all mixed train service.

Q11. What do you mean by "mixed train service"?

A. A train which carried mixed traffic, that is, passenger and freight.

Q12. Passenger and freight. Not merely passenger and baggage?

A. No.

Q13. But passenger and freight.

A. Passenger and freight.

* * *

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The WITNESS: I don't believe that I had finished my statement.

Mr. ROOD: No. You were talking about mixed train service.

The WITNESS: Mixed train service.

Mr. ROOD: I interrupted you to ask you to define "mixed train."

The WITNESS: The object of that survey was to determine whether the service to the public on mixed-train service, which is necessarily very slow on account of the mixed traffic, the average speed of the train, was satisfactory to the patrons of the line. As a result of that survey, some R. P. O. routes and some closed-pouch routes were discontinued. This particular route, the field officials recommended a discontinuance of R. P. O. service over a portion of the route to be superseded by closed-pouch service, but in connection with the recommendation of the field, the Department received a number of petitions and protests from the patrons along the line, as well as the officials of

the railroad, urging the continuance of the R. P. O. service on the grounds that, if there was any curtailment of the service made, it would possibly jeopardize the continuance of the railroad. And, in view of that protest or the many

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protests, I ordered the case filed with no action taken.

159 I might add that the most—probably the determining factor in my decision was the fact that the railroad company pleaded that we continue the service because of the financial benefits that were accruing to the railroad, and that has been one of the policies of the Department, that in considering any curtailment or discontinuance of rail service, is to first make inquiry of the railroad company as to what effect upon the finances or the operation of their railroad any such curtailment would have, and we are invariably governed in our decision by the plea of the railroad in response to our inquiry.

By Mr. Roob:

Q14. Do you mean that you occasionally spend more money for mail service than the economics of the situation actually require you to spend?

A. Yes, but the economy is not the determining factor. The Post Office Department is obligated to render a satisfactory service to the public. If the railroad companies provide that service, there is no disposition on the part of the Post Office Department to supplement that service by contract service, or other means, but frequently the schedules of train service are such that the train service does not provide an adequate service, and the public complains because of the late running of trains or the late arrival or the earlier departure.

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which requires the Department to supplement that service, or in cases to supersede the service by what we call a Star Route service, which is established upon schedules that are fixed by the Department.

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Mr. Roob: This witness will testify that under existing laws he is able to pay rates to this railroad higher than the rates fixed by the I. C. C., and that he does make special contracts with railroads to carry mail service when they protest about the rates and say they are not adequate and they have to have more money.

The COMMISSIONER: Go ahead. State.

The WITNESS: Your Honor, there is a provision of law, 39 U. S. C. 565, which carries precise laws and regulations, which read—

The COMMISSIONER: What is that? 39, you say?

The WITNESS: 39 U. S. C. 565, which reads:

"The Postmaster General is authorized to make special contracts with the railroad companies for the transportation of the mails where in his judgment the conditions warrant the application of higher rather than those herein specified, and make report to Congress of all cases where such special

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contracts are made and the terms and reasons therefor."

Now, I presume to state—

Mr. ROOD: Well—

The WITNESS: I assume, at least, that that bill was passed in order to take care of such cases where the Interstate Commerce Commission rules limited the Post Office Department in their payment to the railroads. As you say, we are—the rates are fixed by the I. C. C., and we are obliged to compensate the railroads on the basis of those rates. But if any railroad feels that those rates are not sufficient they have the right, under the provisions of this Act, to apply to the Postmaster General for relief in the way of a special contract under the provisions of that Act, and to my knowledge this railroad has never applied to the Postmaster General for relief under that provision.

Mr. HITT: You mean, you say, to your knowledge, or so far as you know?

Mr. ROOD: He said to his knowledge.

The WITNESS: Well, so far as I know.

Mr. HITT: Yes. That is to say, you don't mean to say that they never did?

The WITNESS: Oh, no, sir. I do not know.

Mr. HITT: You don't mean to say you know that they never did?

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The WITNESS: I mean to say that I can't say positively

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that they never have. I said to my knowledge they have not.

Mr. HITT: Well, now, let me ask you this question: Although this power has been in the Act ever since it was enacted in 1916, in how many instances have you authorized special contracts?

The WITNESS: Well, we have several of them.

Mr. HITT: Well, several. Can you name which they are, and how many of them, without what limit?

The WITNESS: Well, we have the Colorado Southern, the Louisiana & Arkansas.

Mr. STEPHENSON: Rio Grande Western; Manhattan—

The WITNESS: Manhattan-Hudson.

Mr. STEPHENSON: —Hudson.

Mr. ROOD: Was it Manhattan?

Mr. HITT: There are three.

Mr. STEPHENSON: The two railroads in Alaska: The Alaska Railroad and the Alaska—the—

The COMMISSIONER: We are getting the record in quite a bad situation here.

The WITNESS: Yes. Mr. Stephenson would be in a better shape to give the itemized record of those special arrangements.

Mr. HITT: The point I want to bring out, Mr. Commissioner—and perhaps I had better reserve it to a little later—was the fact that it has been, so far as we have

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understood and were told, the policy of the Department had been not to make special contracts except in very special circumstances, like the Rocky Mountain roads, peculiar conditions there.

Mr. ROOD: Well, you can ask him that on cross-examination.

The COMMISSIONER: We were discussing the admissibility of this evidence.

Mr. ROOD: Yes. We are going to show that this seller was a willing seller.

The COMMISSIONER: I have a very great deal of doubt. As a matter of fact, I think we will adjourn until 2 o'clock. I want to look into it a little bit.

Mr. ROOD: It is perfectly true that our contention may make new law in the Supreme Court, but we have no—

The COMMISSIONER: Well, it won't make new law with me. I follow the Supreme Court.

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Q15. I show you a document and ask you to describe it.

A. This is a communication addressed to the superintendent of passenger transportation of the Georgia & Florida

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Railroad under date of October 10, 1938, to the effect that consideration was being given to some change in the authorized service, and making inquiry as to what effect, if any, loss of mail revenue to the railroad company would have on that company.

Q16. And did the company reply to that letter?

The COMMISSIONER: Let us get it marked.

Mr. ROOD: All right. I will offer this as an exhibit.

The COMMISSIONER: Mark it Defendant's Exhibit 7.

(Carbon copy of letter dated October 10, 1938, from Chief Clerk, District 8, to Mr. L. R. White, was marked "Defendant's Exhibit No. 7," for identification.)

The COMMISSIONER: It will be admitted.

By Mr. ROOD:

Q17. And did the railroad reply to that letter?

A. Yes, sir.

The-REPORTER: Did you say it would be admitted?

The COMMISSIONER: Well, Mr. Hitt, now we are going into this matter to which you wanted to make your objection at the proper time. In other words, this first letter starts out the train of thought upon the request of the railroad for continuance of the service.

Mr. HITT: Mr. Commissioner, we want to enter an
165 objection to this testimony as to what occurred in
1939, which is subsequent to the period to which this
proceeding relates, and

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it seems to me that it is entirely irrelevant and immaterial to the particular proceeding here.

The COMMISSIONER: I do not have my copy of the amended petition here. I thought it ran up to about—for what period are you claiming, Mr. Hitt?

Mr. HITT: Let's see. Six years. It was 1938, wasn't it?

Mr. STERN: To February 28, 1938.

Mr. HITT: This was subsequent to that time, February 28, 1938. The exhibit to which he has referred is October 10, 1938.

The COMMISSIONER: I should think that would not be relevant. I assumed that you had the material during the period involved; that is, I had assumed that you had evidence as to the period involved.

Mr. STERN: Off the record, your Honor, I don't know. No plea of the statute of limitations was made in that petition.

(Here followed discussion off the record.)

Mr. ROOD: Your Honor, this is the final phase in an investigation which began, I think, in 1937, and this line of testimony is designated to show the function and the value of the service at the time the investigation was made. Now, the investigation—

The COMMISSIONER: Well, let me see the letter a minute.

Mr. STERN: Oh, is that the letter? What is the date of that letter?

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The COMMISSIONER: May I see that Exhibit 7?

(The document referred to was handed to the Commissioner.)

The COMMISSIONER: On the face of those two letters, they all deal with a time prior to the time mentioned in the petition, as I gather it. Perhaps there were investigations started sooner, but apparently the first knowledge of this is brought to the plaintiff in October 10, 1938, and he replied on October 25, 1938.

Mr. Rood: Of course, his last paragraph on the first page cites operating reports and financial condition for the first nine months of 1938. We will offer—we will show that this investigation did begin in 1937, and we will also show that the physical conditions and the economic conditions and the traffic handled on this route at this time were similar to the conditions that prevailed all the way back. We are going to show that by traffic counts and regular inspection reports made on the route, going back as far as 1931.

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Mr. Rood: Well, I offer that letter in evidence that you have in your hand.

The COMMISSIONER: Yes, I know, but what I am saying is that on the face of them they are not admissible, are they?

Mr. STERN: Will your Honor receive them subject to connection after we lay the foundation?

The COMMISSIONER: Well, now, that is all right. Now, I am not quite clear. It is not quite clear to me just what the connecting thing is going to be.

Mr. Rood: The connecting thing is going to be a statement showing that all the conditions were similar for the years immediately preceding, going back as far—for the full period of this petition.

The COMMISSIONER: Well, assume that is true: How does it make this action in 1938 an admission as to those earlier years?

Mr. Rood: It is evidence as to the importance and the value of this route.

The COMMISSIONER: I will withhold the ruling until any further—

Mr. Rood: All right. I offer—

By Mr. Rood:

Q18. I ask you if that is the reply that you received from the railroad.

A. Yes, sir.

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Mr. ROOD: I offer that in evidence.

Mr. HITT: I make the same objection.

The COMMISSIONER: Let it be marked Defendant's Exhibit No. 8, and I will just reserve ruling on that until it can be determined whether or not—

Mr. HITT: May I see a copy of that?

The COMMISSIONER: What is the date of that, Mr. Reporter?

The REPORTER: October 25, 1938.

The COMMISSIONER: Ruling is reserved.

(Two-page letter, dated October 25, 1938, from I. R. White to Chief Clerk, District 8, Railway Mail Service, was marked "Defendant's Exhibit No. 8," for identification.)

Mr. ROOD: I ask that this document be marked for identification.

(A group of papers was marked "Defendant's Exhibit No. 9," for identification.)

168 By Mr. ROOD:—

Q19. This is our Exhibit 9. I show you Exhibit 9, and I ask you what it is.

A. This is a recommendation submitted by the field officials of the Railway Mail Service reporting—

The COMMISSIONER: Recommendations to whom, Mr. Hardy?

The WITNESS: Recommendation to the general superintendent of the Railway Mail Service.

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The COMMISSIONER: Yes.

The WITNESS: Reporting the result of a survey made of the service on the Augusta & Madison R. P. O., in compliance with a circular letter issued by the general superintendent, Railway Mail Service, under date of September 8, 1937. In this recommendation—

The COMMISSIONER: Well, before you go to that, let us just hold it a minute.

Mr. ROOD: Oh, I offer this in evidence.

Mr. HITT: This recommendation is dated June 21, 1939, a still later date than the one that has been referred to, and does not relate to the period here that is affected in this proceeding, and we object to this as being irrelevant and immaterial.

The COMMISSIONER: May I see a copy of this?

The WITNESS: Yes, sir. That is a report, your Honor, on that letter that was sent out.

Mr. ROOD: The thing that we are particularly concerned with is, of course, a lengthy discussion and

analysis of the route and the performance on the route, which is reported in that report to the General Superintendent, but which was, of course, made much earlier.

The COMMISSIONER: I am going to reserve ruling on that, also, to see whether or not something turns up that will make it admissible.

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Mr. Rood: All right, your Honor.

The COMMISSIONER: That is the only ground of your objection, is it, Mr. Hitt?

Mr. HITT: Yes. It is just irrelevant and immaterial to the case.

The COMMISSIONER: All right.

Mr. Rood: Off the record.

(Here followed discussion off the record.)

Mr. Rood: Now, this was the recommendation to discontinue part of the R. P. O. Service and to convert to closed-pouch service. That has been earlier testified.

By Mr. Rood:

Q20. Did that document show the condition of the route during 1938 and 1939 in such a way that you—

Mr. HITT: Mr. Commissioner, I am going to object to the testimony that goes along with this, but if you want to reserve ruling on that and let him go ahead and get it on the transcript, why, I have no objection to that; but I wanted it to be understood that my objection also goes to the testimony that goes with the exhibit.

The COMMISSIONER: Yes, it will be understood that your objection goes to any testimony connected with the exhibit.

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Q21. Did this document show that the post office could save any money by altering this route?

A. Yes, sir.

Q22. How much could be saved?

A. There would be a saving of \$4,870.56 for space, and a saving of \$2,450 for clerk hire, and \$90.69 for travel allowance to the clerk, making a total net saving of \$7,685.

Q23. Is that on an annual basis?

A. Per annum.

Q24. Yes. Was the service found to conform to schedule and to be adequately prompt?

A. No, sir. The reason that the field officials submitted this recommendation was on account of the irregular operation of the mixed trains, which resulted in a delayed delivery of mails to the offices on the route.

Q25. Now, can you express any opinion as to the value of the railroad's service to the post office at the time you were considering that report?

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A. Well, we did not consider that the service rendered by this route met the standard or requirement of service on comparable lines on which we were paying the same rate of pay.

The COMMISSIONER: Are you speaking as to what the report shows, or is this—you are speaking as to what you know?

The WITNESS: The report shows that, as well as that was the opinion of the Department in the findings.

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By Mr. Rood:

Q26. Yes, now, was that your opinion?

A. Yes, sir; that the service was not worth what we were paying for it, but at that time we established a policy that we would not curtail or discontinue mail pay to any railroad which protested or objected to the loss of mail revenue. As a good business proposition, we should have discontinued or curtailed the service, but we had—

The COMMISSIONER: What I am trying to get at, Mr. Hardy, are you testifying now as to what you know from your experience in the Department at that time, or are you simply testifying as to what you gathered from that report?

The WITNESS: I am testifying, your Honor, to what is contained in this report which reflects or is in reply to a circular letter or policy enunciated by the Department, to make investigations of all mixed train service to ascertain whether such service could be curtailed or discontinued.

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Q27. Now, Mr. Hardy, this report was directed to you, was it not?

A. Yes, sir.

Q28. You were the Head of the Railway Mail Service at that time?

A. Yes, sir.

Q29. And did you apply your judgment to what the report contained?

A. Yes, sir.

Q30. And was it your judgment that on the facts stated in the report that service was not worth what it was costing?

A. That is true.

Q31. Now, tell us what some of the considerations were that led you to that conclusion, aside from the poorness of the service. That is, was there other service alternately available?

A. There was other service available, but the determining factor was the receipt of this voluminous correspondence in the form of protests.

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By Mr. Rood:

Q32. Now, wait a minute. I don't mean the determining factor in your decision to keep it going, but I mean the determining factor in your opinion that it really wasn't worth what you were paying, but, nevertheless, despite that opinion, you decided to keep it going.

Now, when you decided that it really wasn't worth economically what it cost, what were some of the considerations which entered into that decision?

A. The Department uses an inspection form for all R. P. O. train service. Field officials are required to make periodical inspections of every R. P. O. train to determine what the conditions are in those trains: The volume of mail, maintenance of schedule, and whether the service justifies the expense. We reserve these reports on a run of this type once every two years. These reports give detailed information as to the number of pouches received en route, the number of letter packages distributed from those pouches, the number of sacks of papers, the number of registers; and it is very simple to determine the value of an R. P. O. service from a careful study of these inspection reports.

Q33. Mr. Hardy, was such an inspection report attached to the report of your Atlanta office?

A. Yes, sir.

The COMMISSIONER: Exhibit No. 9, you are referring to?

Mr. Rood: I refer to the last two sheets of Exhibit No. 9,
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which I just handed you (addressing Mr. Hitt).

174 The WITNESS: These reports were prepared in connection with a personal inspection made by the chief clerk, Railway Mail Service, of Train 4 between Valdosta and Augusta on May 18, 1939, and on Train 5 between Augusta and Valdosta on May 19, 1939. Train 4, it shows that on a run of 223 miles, consuming eight hours and forty minutes—

The COMMISSIONER: You mean these runs were made in 1939?

The WITNESS: Yes, sir; this inspection was made.

The COMMISSIONER: Well, is that inspection made from former records or a sample run, or something of that kind?

The WITNESS: These inspections are made—we require our field officials to make on the lighter runs an inspection every two years, complete inspection; and on the medium runs once a year; and on the heavier runs—

The COMMISSIONER: Well, now, when you say so many bags of mail were carried on a run, you are referring to a run that was made—

The WITNESS: That was a run on this date, this particular date.

The COMMISSIONER: In 1939?

The WITNESS: Yes, sir.

The COMMISSIONER: I think that we shouldn't go on and fill the record with material as to what happened on an inspection run in 1939.

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Mr. ROOD: No, your Honor; we are going to introduce inspection reports on this route which will date back: 1937, 1935, 1933, and 1931.

175 The COMMISSIONER: Perhaps they are competent, but I am referring to what physically happened in 1939, and I do not see that that is competent.

Mr. ROOD: We will show that what happened in 1939 was the same as what was happening in the earlier years.

The COMMISSIONER: Well, is it material what happened in 1939? That is the point.

Mr. ROOD: The thing that is material is what happened in the earlier years, and if we can show that by showing that it was the same as what happened in 1939, and that what happened in 1939 produced this careful analysis and this value judgment—

Mr. STERN: His basis for his opinion, your Honor.

Mr. ROOD: —then we think his opinion as to the value, on those facts, showing the same facts existing in the earlier years, by connecting up, is relevant.

The COMMISSIONER: The only opinion he has expressed yet was that in 1939 he came to the conclusion that on the basis of this report it wasn't feasible.

Mr. ROOD: Well, we will—

The COMMISSIONER: Now, maybe you are going to ask him is his opinion that it was no good in 1935, but you haven't asked him that yet.

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Mr. ROOD: No; we have not been able to locate the records for 1935 yet, but they are on the way. We had an air mail voucher this morning.

The COMMISSIONER: I don't know why you are going in the back door always on these things.

Mr. Rood: Well, I shall now withdraw Mr. Hardy from the stand, subject to recall later, in order that we may be able to locate those earlier reports, and in order also that I can put Mr. Hansbury on the stand, who has to get a transeontinental train.

* * *

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EMIL J. BINET, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination by Mr. Rood:

Q1. Mr. Binet, will you state your name and address for the record?

A. My name is Emil J. Binet, Washington, D. C.

Q2. What is your occupation?

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A. I am an accountant and analyst with the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission.

Q3. How long have you been doing that?

A. About five years.

Q4. What were your previous occupations?

A. Prior to my present position I was an auditor for the Bureau of Accounts of the Interstate Commerce Commission, with duties auditing and checking the accounts and records of steam railroads. I held that position for a matter of about nine years, and prior to that I held the position as auditor for Minnesota, Dakota and Western Railway Company, at International Falls, Minnesota, for a period of about three years; and for a period of nine years prior to that position I was Chief Accountant for the St. Paul Port & Terminal Railway Company, at South St. Paul, Minnesota.

Q5. What does the nature of your actual work in the Interstate Commerce Commission with respect to railway accounts consist of?

A. My duties with the Cost Section of the Interstate

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Commerce Commission are to review cost data in rate cases, and to prepare cost data for various studies that the Section undertakes, to establish in connection with all

rate cases all over the country for railroad and motor carriers.

Q6. Have you had experience auditing railway accounts?

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A. Yes, sir; extensive experience with many, many large Class I railroads over the United States.

Q7. Name some of the railroads.

A. Starting in the east, New York, New Haven & Hartford, Pennsylvania Railroad, the Nickel Plate, the Missouri Pacific, the Great Northern, the Northern Pacific, the Union Pacific, the Atlantic Coast Line, Southern Railway, and various roads in Texas such as the Denver—with the roads out of Colorado, Denver & Rio Grande Western, Colorado & Southern, Denver & Salt Lake, and affiliated corporations; the Missouri, Topeka & Santa Fe, and the Southern Pacific, Chesapeake & Ohio, and the Richmond, Fredericksburg & Potomac. Is that enough?

Mr. ROOD: Yes.

The COMMISSIONER: Proceed.

By Mr. ROOD:

Q8. Have you had specific experience in the analysis of cost of railroad operations?

A. Yes, sir.

Q9. Have you participated in such studies in abandonment cases.

178 A. Yes, sir; I have.

Q10. What are some of the abandonment cases?

A. In the Illinois Central, I participated actively in the analysis of cost data in that case, during which I

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reviewed the Commission's files and records on a number of other abandonment cases; the Rock Island, and the Erie.—I cannot remember all of them.

Q11. In those abandonment cases what were the issues at stake?

A. The issues at stake were that the carriers who desired to abandon a segment of their line, usually a branch line, approached the problem by showing what their loss in revenues would be from the abandonment of the segment, and the saving in expenses which would result from the abandonment and, of course, their figures invariably showed that there was a tremendous saving to be effected as the result of the abandonment.

In accumulating and preparing the costs that they would be saved following an abandonment, they use and were required to use those expenses which were out-of-pocket and would be saved in the event of abandonment. In other

words, those expenses that could be directly assigned to that particular line or segment of property that they proposed to abandon.

Q12. Is that the same as the added cost of running that branch?

A. That is my understanding; it is.

179 Q13. Two phrases describing the same thing?

A. Yes, sir.

Q14. Have you gone over the Plaintiff's statistical exhibits in this case?

A. Yes, sir; I have.

Q15. Have you examined them to see what costs they show as being cost of carrying the mails?

A. Yes, sir; I have.

Q16. Have you formed an opinion?

A. Yes, sir; I have.

Q17. What is your opinion?

A. My opinion is that the carrier, in the exhibits that I have reviewed, did not make any attempt or did not show any expenses that were directly identifiable or assigned to the transportation of the mail. They have used, in effect, statistical car foot miles in the apportionment of all expenses and railway tax accruals, and equipment, and joint facility rents.

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Q20. In your opinion what costs have been shown in these exhibits as cost of carrying the mail?

A. These exhibits do not directly assign any costs to carrying the mail. They do not identify any expenses incurred solely from carrying the mail.

Q21. By examining these exhibits can you form an opinion as to what those costs were?

A. I cannot.

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Q22. You cannot form an opinion?

A. Not as to the expenses solely related to carrying the mail.

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Q29. These Trains Nos. 4 and 5 have been shown in the Plaintiffs' exhibits as containing a 15-foot compartment for Railway Mail Service.

What would be saved if they did not have to run that 15-foot compartment for Railway Mail storage?

A. And continue to operate the car?

Q30. Can you tell whether they would continue to operate the car?

A. No, I cannot. If they continue to operate the car and do not provide any mail service in this 15-foot compartment, in my opinion there would be no savings, or an inconsequential one.

Q31. Have you examined these accounts furnished by the plaintiffs, with specific reference to the question as to whether or not a car could be saved on those trains?

A. I have approached the matter in that light; yes, sir.

Q32. You have had opportunity to find out from the

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plaintiffs' exhibits whether they could save a car?

A. Yes, sir.

Q33. Have you formed an opinion about that?

A. In my opinion, I do not think that if mail service were abandoned over the entire line that it would make

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181 any difference in the operation of the car in which the 15-foot compartment was used for transporting the mail, since the remainder of the car was used for the carriage of baggage and express.

Q34. Well, how many passenger train cars do the accounts show that trains Nos. 4 and 5 normally carry?

A. The carrier's exhibits show that each of trains 4 and 5 carry two regularly assigned passenger train cars, one of which was a full passenger coach and the other a combination car containing a 15-foot R. P. O. compartment authorized for the mail service.

Q35. How many freight cars were included in the train?

A. The carriers' exhibits do not show any freight cars.

Q36. Were there freight cars?

A. I understand trains 4 and 5 were mixed trains, carrying predominantly freight?

Q37. You mean that is your opinion?

A. No, I rely on the fact that a witness for the Post Office Department inspected the trains, the main line

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operation of trains 4 and 5 in 1935, I believe, and testified that the train contained perhaps about eight freight cars, and further than that, I reviewed correspondence in the Bureau of Statistics' Annual Report files wherein the question was raised with the carrier as to whether it

operated any passenger train service, as such, and
182 the carrier informed the Bureau

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that during, at least the years 1936 and afterward, it operated no regularly scheduled passenger train service.

Q38. And from that you concluded these were mixed trains?

A: Yes, sir. I also know from the fact that the carriers' Annual Reports for the years 1936 and thereafter show its expenses with the exception of a small minor amount charged entirely to freight train service, which is in accordance with the Commission's rules that if the mixed train is preponderantly freight it should be classed as freight.

Q39. Do you conclude from that that these mixed trains were predominantly freight?

A. Yes, sir.

The COMMISSIONER: Is there any question that the trains were predominantly freight?

Mr. HITT: I don't know whether they were predominantly freight, but they were trains the Post Office Department used in making the test for 28 days in 1931. That was the test period, and that formula was followed as the one agreed upon.

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between the Post Office Department and the carriers.

In 1935 the Post Office Department did not know any better way to arrive at a proper separation of freight and passenger expenses, to determine what portion of the passenger service should be charged to mail.

The COMMISSIONER: Go ahead.

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By Mr. Rood:

Q40. Can you refer to any place in the annual reports that you may have with you, which show that those trains were listed as mixed trains and predominantly freight, or any data from which you make that conclusion?

A: I can show the 1937 Annual Report to the Commission, from which it will be seen that the expenses are, with the exception of a few very minor amounts, charged to freight train service.

Q41. Can you do that now?

A. Yes, sir.

Mr. HITT: I think we can admit that, because we had to make an Annual Report the way the Commission requires it, and most of the cars were predominantly freight, which resulted in our reporting expenses for freight train operation for those years. I take it that that is a foregone conclusion. I don't see why you would have to go to the trouble of proving that.

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Q43. Do you find in these exhibits any statement by the carriers which indicates that they could have cut one of

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these cars except the mail?

A. No, sir; I did not find any such statement in the exhibits.

Q44. You said it was your opinion you could not cut a car.

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Let me ask you this: Why couldn't they cut the full passenger train car?

A. Well, based on these exhibits and the statistical data furnished by the carrier, if the combination car containing the R. P. O. compartment was eliminated it would follow, or it would seem to follow that the baggage and express also carried in that combination car would have to be carried in the full passenger car coach. In order to do that it would be necessary to eliminate or remove some of the passenger seats in the 4 and 5 passenger coach.

Now, the exhibit showed that on the average the passenger coaches can accommodate from 50 to 66 passengers.

The COMMISSIONER: You mean they carried that much?

The WITNESS: They accommodated that much; that is the capacity, 50 to 66 passengers.

Mr. ROOD: Now, wait a minute. That is shown, your Honor, in Exhibit 10 of the printed proceedings.

The WITNESS: For convenience, we will take the figure of 60 passengers as the capacity of this full passenger coach, which would mean that there would be 15 seats on each side of the train, as I see it.

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By Mr. ROOD:

Q45. Fifteen double seats?

A. Yes, on each side of the aisle. As I also see it, the passenger trains in the southern states, and probably Georgia in particular, segregate a section for the

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colored passengers and the white passengers, which would mean that the car would require a separate section for either the white or the colored to be compressed to a point not practicable if certain of these seats were removed in order to allow or to permit the carrying of baggage and express in such passenger car.

Q46. You mean if they had a compartment between the colored and white, the two compartments equal in size,

there would be seven or eight seats on each side for the white passengers, and seven or eight seats on each side for the colored passengers.

A. If they were equally divided between the white and colored.

Q47. Now, do you know that these trains carried passengers?

A. Yes, sir.

Q48. Do you have any indication as to the passenger traffic of this railroad?

A. Yes, sir; as taken from the carriers' annual

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reports.

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Q73. To sum it all up, Mr. Binet, is your conclusion that they would be likely to cut a car or they would not?

A. In my opinion they would not be likely to remove a car in the event of the elimination of the mail service, and continuing to carry baggage and express on that train.

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Q74. If they did not remove a car how much cost would they have saved if they had not carried mail?

A. As I said before, if they continue to operate the two cars on these trains, each train, the amount of saving in my opinion, based on the carrier's exhibits and known figures, the saving would be inconsequential.

Q75. You mean, by inconsequential, what sort of figure?

A. Oh, well, making the bill against the Government, postage, stamps, and maybe repairs occasionally to that part of the car used for a mail compartment.

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Binet—Direct

Q81. I guess my question was not clear. You say it is your opinion they could not have saved any cars at all?

A. That is correct.

Q82. But you are not certain about that?

A. I am reasonably certain they could not have saved anything but an inconsequential amount.

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Q102. Now, I show you Defendant's Exhibits 13 to 20, as marked for identification, and ask you to describe them generally.

A. These are statements showing for each of the years 1931 to 1938, inclusive, the computation of the added expense incurred by the Georgia & Florida Railroad in transporting combination cars containing RPO compartments, based on the assumption that the elimination of the United States Mail Service would result in the elimination of such cars from transportation service.

In preparing these statements we have included in the computations only those expense accounts which in our judgment, and from our experience, we conclude contained items of expense which the carrier would obtain some saving in the event one car were removed from each train in the transportation service.

You will note in Column A on Sheet 1 of these statements we list the various expense accounts as prescribed for steam railroads, and in column B we show the total expenses as taken from the carrier's annual report.

188 In Column C we list or show the out-of-pocket portion of the expenses in these various accounts, which percentages were obtained from Senate Document No. 63, of the 78th Congress, First Session, this document being a report of the studies made by the Cost Section of the Bureau of Transport Economics and Statistics, in connection with the rail transportation.

The COMMISSIONER: Let me ask you something about that. Are those cost studies used in the Interstate Commerce Commission, in its daily work?

The WITNESS: Yes, sir, very, very much so, in numerous instances.

The COMMISSIONER: For the purpose of valuation or rate making, or what?

The WITNESS: For the purpose of assisting the Commissioners and the Examiners primarily, in rate cases and allied matters.

By Mr. Rood:

Q103. How about abandonment cases?

A. Well, the Commissioner asked me whether our cost studies, as reflected in Senate Document No. 63 are used in abandonment cases, and I can't say that is the case, Mr. Rood. They are used in many, many different types of work for the Commission, and the Commission's Examiners, having to do with rate cases and the cost of transportation generally.

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to show that level below which rates should not fall.

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Q158. Now, Mr. Hitt brought up the point that this is not actual in the sense you do not get down on the railroad and watch the operations during that period, and you took all the basic original figures from the railroad's annual report.

Does the Commission certify that those annual reports are correct?

Q159. Do you believe them to be correct in this case?

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The COMMISSIONER: I don't think that makes any difference. They are admissions. If he does not, then his whole testimony is out. He is just giving an opinion based on them. You had better not ask him that question. You might get a wrong answer.

Mr. Rood: I will withdraw the question.

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By Mr. Rood:

Q174. Do you think that the basis as used in Exhibits 12 to 20 is a better estimate of cost of carrying mail in this proceeding than the basis used in the plaintiff's exhibits?

Mr. HITT: I object.

Mr. Rood: He is an expert.

The COMMISSIONER: You are putting up to him the very question the Court has to decide. Objection sustained.

Mr. Rood: I think I will except to that.

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Mr. Rood: Will you read the last question?

(Thereupon, the Reporter read the question last propounded, as above recorded.)

The COMMISSIONER: I said the question was objectionable, but on hearing it again, I believe I will withdraw the ruling and let him answer it.

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Q175. Directing it to cost, do you think your measure of the costs is a better one than the plaintiff's; your basis, that is, your added cost theory, rather than the apportionment?

A. Yes, I say it is a more fair, better basis, far better approximation for calculation of the actual cost of transporting the mails than the carrier's method, which did not state that there was any attempt to make a calculation or computation of actual cost of carrying the mail, in that they merely applied a car foot mile ratio to all expenses.

regardless of what they were.

Q176. You say the Commissioners used this basis in determining costs in other cases?

A. Used what basis, Mr. Rood?

Q177. Your basis.

A. Well, I would not want to make it as specific as that. The Commissioners depend upon the case and the circumstances. The abandonment proceedings are usually, in fact almost invariably, predicated upon the revenue that the carrier receives from the line to be abandoned and the out-of-pocket expenses of handling the traffic over the line to be abandoned.

Does that answer your question?

Mr. Rood: Yes.

191 Mr. HITT: May I inject there, has such a study identical with this been made by any other carrier for any other purpose?

The WITNESS: I never made one.

Mr. HITT: Have you ever heard of one?

The WITNESS: I have never heard of one, no, not to my knowledge.

Mr. HITT: For mail pay cases or otherwise?

The WITNESS: No.

By Mr. Rood:

Q178. You say you have never heard of any such study
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being made before?

A. In a mail pay-case, he says.

Mr. HITT: Or any other kind of case.

The WITNESS: Oh, yes, in a number of cases both the Commission and the carriers have gone to considerable detail in figuring their added or out-of-pocket cost, or what they would save if they did not transport the traffic in question.

By Mr. HITT:

Q179. Have you ever had one of these cases, one of this particular kind that would be identical with this?

A. I consider an abandonment case more or less analogous to this.

Q180. This kind of step, working it out in the manner you have done here, that has been done in abandonment cases?

A. In principle yes.

192 Q181. You think it is analogous to abandonment cases?

A. I think the issues are analogous, yes.

Q182. Do you know of any other cases in which such a study has been used?

A. I have a case in my mind of the Illinois Central, where they sought a decrease in rates involving the transportation of black strap molasses, I believe it was, and they made the effort to arrive at what would be the actual out-of-pocket expenses of handling that traffic.

Q183. Is this a standard form of study by the Interstate Commerce Commission? Have they used it themselves, made a study and put it in in a case of this character, worked out in this manner on general averages?

A. You mean involving mail pay case?

Q184. Any case.

A. It would depend upon the nature of the case. Of course, all the carriers confine themselves to a statistical factor in statistical apportionments.

Q185. I mean basing it on the hypothesis of a Senate Document, No. so and so, and carrying it forward like this, and dividing it up?

A. Yes, I would say in principle that method is used in a great many cases. It depends on the individual issue at stake, but in principle it is followed.

Q186. I am talking about using a study substantially identical with this in other cases. In other words, haven't you made novel departures here, different from what has ever been done?

193 A. No, I don't think so. The substance of this study here is similar to a great many cases. We have used car mile as the basis for separating these expenses, and that is used in a great many of the Commission's cases. For certain expenses we have used the out-of-pocket portion of the expenses, which the Commission has done and the railroads themselves have done. We have attempted to show the savings

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in the various expenses, which the Commission also does and also the railroads.

But I might, say, Mr. Hitt, you would have to have another mail pay case to tie it up identically with the factors involved here.

Q187. And that never has been done?

A. To my knowledge; at least, I have not, no. I have not worked on any case involving the added expense of carrying the mail.

Q188. If there had been such a case you would have known about it, wouldn't you?

A. Not necessarily. It might have been done years ago. I would know about it if it had been done in the last four or five years.

Cross Examination by Mr. HIRT:

Q225. Now, maybe I can help to clear that up, Mr. Binet. Is what you are attempting to bring out the fact that the Commission made a change in those rules for freight and passenger expenses after some year in this period, that they had the result of throwing all expenses of the Georgia & Florida for passenger operation into freight expenses?

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A. I don't know whether it did in 1937 or not, but it had the effect of throwing some of them in.

Q226. Wasn't your point in showing some passenger revenue that they had some profit?

A. That is right.

Q227. Whereas under your separation of the expenses they had to throw the passenger expenses into freight, and there probably was not a profit?

A. Yes, I think that was the explanation of that showing there.

Q228. You are quite correct, sir.

A. I don't want to show that they made a profit merely because it showed it there. I think it was an accounting problem.

Q229. Yes. In other words, the Interstate Commerce Commission in formulating its accounting regulations, they have to view the country as a whole, in the matter of Class

I railroads they used the Class I as a whole, and have
195 to make the most practicable arrangement that will be generally comparable for a wide territory; isn't that right?

A. I would not want to say what was in their minds when they evolved it.

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Q230. You know they do that. Certain accounting regulations apply to Class I railroads, and certain others apply to others..

A. Oh, yes, they have the different regulations for Class I and Class II roads.

Q231. You would know if all the carriers in Class I, regardless of diversity in Class I, if they all reported on this average or uniform instructions, if they were not reported to show the average they would be all merged in with the average.

A. I take it you mean if the Commission's rules for the account to be kept by carriers, if these rules did not apply to a certain road and did apply to certain others?

Q232. Applied to Class I roads as a whole, but it produced distorted results as to one?

A. They all had to report on the same basis.

Q233. Yes.

A. That is correct.

The COMMISSIONER: How is the Georgia & Florida classed?

The WITNESS: Class I railroad.

By Mr. HITT:

Q234. Do you know why that is so?

A. I believe it is because its operating revenue exceeds over \$1,000,000.

196 Q235. Class I roads include lines making over one million,

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and does not include lines making under a million. The result of these statistics is that all Class I roads are considered together so that you hit an average, isn't it?

A. What statistics?

Q236. Statistics of the Interstate Commerce Commission that you have been reading from, or the studies you read from Senate Document No. 63. That is for the general average for Class I roads as a whole.

A. Yes, the out-of-pocket percentages we took are based on territory-wide studies. However, we have applied those averages to the specific expenses of the Georgia & Florida Railroad, but as far as this study here is concerned, I read you the figures of the Georgia & Florida itself.

Q237. I know that. These figures you have made your study on are based on averages produced for lines as a whole for the whole territory?

A. The out-of-pocket percentages.

Q238. Yes, upon which your study is based.

A. They are based upon the Commission's studies of the operation of the Operating Expenses of traffic over an extended period for a large number of carriers.

Q239. For Class I roads?

A. Well, I assume they are Class I roads.

Q240. Do you have any idea what the average earnings per mile of Class I roads is as a whole?

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A. Offhand I couldn't say.

Q241. Would you say it was not less than twenty thousand a mile?

A. I would not have any idea without checking it up.

Q242. Would you say, as an analyst, that averages produced on a line of a thousand miles would be comparable

With figures produced on a line of a hundred miles, with earnings of only three thousand a mile?

A. What kind of earnings?

Q243. Average earnings and average mileages. Would you say any operating statistics or financial results or operating expenses or average earnings would be comparable?

A. They might or might not be. I couldn't answer that.

Q244. You would have to show the comparability?

A. You would have to analyze all the figures to determine whether a road of light density would have the same figures as the road of heavier density.

Q245. That we have not done here?

A. No, sir.

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Q249. When you gave the figures of number of passengers handled in several years, you did not make any account at all or take into consideration, or make any allowance one way or another as to how far one passenger traveled, or gave no indication of the footage so occupied?

A. You mean the distance carried? No, sir. We merely place in there the number of passengers carried and the passenger mile.

198 Q250. So far as you know, you have nothing to show whether they could operate with one car or two cars? You just assumed possibly they could operate with two cars whether mail was in there or not?

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A. Will you say that again?

Q251. You assumed they would have to operate two cars even though the mail was discontinued, but in your calculation you assumed they could do away with one car?

A. That was the extreme that we would say. My belief is that they would have to continue to operate two cars, as I said, but the maximum would be one car would be taken for use of the RPO car.

Q252. Your calculation was based on one car?

A. On each one of the trains.

Q253. And you thought possibly they could do away with one car, but whether it was so or not you had nothing to go on except the assumptions you made?

A. I didn't say they could do away with one car or any car, but assuming they could do away with one car that would be the effect.

Q254. In your opinion, if they couldn't do away with one car, your opinion is not based on the observation of the traffic itself, but it is based on what?

A. It is in a sense. I think there were some figures in the cars that showed during the year 1931 there was an average of 25 or 30 passengers per car on Trains 4 and 5.

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Q258. When you use the expression, "we did this", or "we did that", you are using that in the editorial sense?

A. I would not say exactly an editorial sense. In the preparation of all this data I have had to confer with other members in the Section on various little points. We talked this matter over, and that is why I used the word "we".

Q259. Did you mean to be speaking for them as well as yourself?

A. I have had the benefit of the views of other people. I have not always adopted them, but we have discussed these matters.

Q260. In other words, it is your opinion after you talked it over with other members?

A. That is correct.

Q261. I take it that you have not discussed it with everybody in the Interstate Commerce Commission?

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A. Oh, no, sir.

Mr. HITT: Mr. Commissioner, I believe that will conclude my examination, and I would like again to move for the exclusion of the whole line of testimony. He has testified in order to have a proper comparison, he would have to analyze it and show the proper comparability of the comparisons made.

The COMMISSIONER: Motion overruled.

Mr. HITT: Exception, please.

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Parr—Direct

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GILBERT J. PARR, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination by Mr. ROOD:

Q1. Mr. Parr, you may proceed.

A. My name is Gilbert J. Parr, Chief of the Cost Section of the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, with headquarters in Washington, D. C.

I have been Chief of the Cost Section for a period of six and a half years. Prior to that time I was for a period of 19 years connected with the Missouri Pacific Railroad at Houston, Texas, and various other of the division headquarters of the Missouri Pacific in Texas.

I was employed in the division office, in the Operating Offices all during that time. For the past ten years with the Missouri Pacific I was a special operating accountant and devoted my entire time to making cost studies, both out-of-pocket studies and full cost studies of the operations, and analyzed the carrier's operations, made analyses of the carrier's operations.

My duties with the Cost Section consists in aiding in the devising of the cost formulæ and the analyzing of cost (Page 351)

data submitted by the various parties; that is, motor carrier, railway carriers, and water carriers, and to make reports to the Commission and to aid the Examiners in writing reports for inclusion in the Commission's report.

Q2. What is the relation between you and Doctor Edwards down there?

A. Well, I am assistant to Dr. Edwards. He is Head Cost Analyst, and while my title is Chief of the Cost Section, I would be assistant Cost Analyst.

Q3. Will you state again the name of the section you are in?

A. Cost Section of the Bureau of Transport Economics and Statistics.

Q4. How long has there been a Cost Section?

A. I transferred or came to the Commission for the purpose of heading up the Cost Section.

Q5. That was a new section?

202 A. Yes. The section was in existence possibly six months or a year before that time with a limited staff, possibly one or two men in the staff at that time. When I came with the Commission in 1939, July, 1939, it was one of my first duties to interview people and to form a staff.

Q6. Has the technique and science of cost accounting in the Interstate Commerce Commission improved, developed, or become more accurate since 1928 up to now?

A. Oh, yes, sir. We are learning about costs every day. In other words, we feel that it is hard and we are learning something about costs as we go along.

For example, in the Class Rate Investigation, of which Senate Document No. 63 is a synopsis or contains a synopsis of all the studies in that case, we originally prepared the cost by taking the entire expenses and breaking it down

between the various services, and to various classes of traffic, box car traffic, and so on.

By taking the entire expenses, and then before that bearing was concluded we found that due to distortions in the costs, not in the relative territorial costs, but due to the distortion of the cost for different sized loads in a car, in apportioning the entire expenses, without making any separation between the direct and out-of-pocket expenses, and the constant expenses, resulted in a distortion of cost for particular loads. We therefore introduced, or made extensive studies in connection with the out-of-pocket portion of the cost in order to determine just what the actual cost of handling the traffic would be.

203. On the constant cost or remaining expenses, we felt that it was not in the province of a cost man to apportion those to any particular traffic, so as I say, we made that separation and we showed the out-of-pocket cost separately from the constant cost.

In that Class Rate study, which is reproduced in Senate Document 63, we did show the fully distributed cost; in other words, Distributed the constant cost on a mathematical prorata basis on tons and ton mile. That merely indicates the trend of cost finding in recent years. In other words, we are always willing to learn about cost, and we are always learning a means of apportioning costs.

Q7. Would you say the cost formulae today are much better than the cost formulae used by the Commission in 1928 or in 1931?

A. Well, in 1928 and 1931 the Commission did not have really any cost formulae. They still haven't got any cost formulae, but the Cost Section was formulated for the express purpose of determining cost formulae for that they might be used by the Commission in gathering costs and might be distributed to the carriers so they would have means and procedures for gathering those costs.

For instance, we have developed for railway Form B just a little more refined cost formula, which was used in developing out-of-pocket and full cost in the automobile case. The principal difference between railway Form A and railway Form B, we develop the cost for particular Trains and got at the cost of the steady traffic by taking the apportionment of the steady traffic and the ton miles for the car, ton miles of the particular train, whereas the

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railway Form A which was used in the development of the territorial cost, we used particular averages and developed costs for various groups of expenses, such as car expense, and running expenses, and so on.

We have also developed other cost formulae, railway Form U which is still more refined. It follows the same general procedure as railway Form B, but there is a separation made between the through train and way train in that formula.

We have also developed terminal cost formulae for the development of switching costs. We have developed motor carrier formulae, which we are applying to motor carriers throughout the United States; and a barge formula, and we will in the near future develop a steamship formula.

That is one of our duties in the Cost Section.

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Q11. You are generally familiar with the method by which the carrier states its claim in these exhibits and apportionments its costs?

A. Yes, sir.

Q12. And you are familiar with Mr. Binet's method?

A. Yes, sir.

Q13. Will you tell us what is the best method of determining costs in this case?

Mr. HITT: I object.

The COMMISSIONER: You might ask him what his opinion is as to the best method, as a cost accountant, of determining costs, but I think you are going to find in this case that—all right, go ahead.

The WITNESS: Well, I think Mr. Binet's approach to the subject, that is, the development of the expenses that
205 are incurred or would be incurred in the handling of this traffic, or conversely, the expenses that would be saved if the traffic were not handled, I think that is the more logical approach to ascertaining the actual cost of this traffic. I think a statistical apportionment such as the one used by the carriers in the ascertainment of these costs contain fundamental weakness, the fundamental weakness that the only true cost, the only cost you can really put your finger on or measure, is the out-of-pocket cost; that the other cost, the constant cost, the difference between the out-of-pocket and the total cost, is not susceptible to statistical apportionment.

It is true cost accountants have in the past apportioned those on the basis of out-of-pocket costs, but the fallacy of that is that it apportions a relative large per cent of constant expenses to the traffic which is expensive to handle, and a relatively small portion of expenses to the traffic which is inexpensive to handle, so we cost people feel and believe that the function of the cost man is to develop the out-of-pocket cost, and then to show the constant cost expressed as a lump sum.

However, we go a little further in that, in that we distribute the constant cost for ready references, so that they can see if that particular traffic is making a greater or less contribution to the constant cost than the system traffic.

In other words, we distribute it on the basis of ton and ton mile. We distribute the line mile cost on the basis of ton mile, and the constant portion of the terminal expenses on the terminal basis. We did that with a recognition that constant costs cannot be apportioned on that basis.

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The WITNESS: I would like to make one further statement.

Mr. ROOD: By all means.

The WITNESS: As I listened to the evidence this morning I was rather impressed with the idea that we were trying to spring something new, Mr. Rood was trying to spring something new when he spoke of the out-of-pocket cost, but the fact of the matter, as Exhibit No. 22 will show, out-of-pocket cost has been known for a number of years. The economists in the past have pointed out there are such things as out-of-pocket cost, and a great many of the railroads have used out-of-pocket cost in showing a cost to the Commission. I have in mind the Black Strap Molasses Case, wherein the Illinois Central have shown their added cost of handling the black strap molasses, and also in the Transcontinental Sugar Case, the Southern Pacific has shown their out-of-pocket cost. In fact, the statistician for the Southern Pacific Line, Mr. Day, was one of the foremost exponents of out-of-pocket cost and put in a number of out-of-pocket studies. In all abandonment cases the carriers show out-of-pocket costs, so it is not anything new.

We don't claim to corner the market when we show out-of-pocket; it has been going on for years. No attempt has been made to develop the costs separately from the full costs. In fact, up until six or seven years ago most of the cost studies were on the basis of full costs. By that I mean such a study as the carriers here have submitted, taking their total expense and breaking it down into various segments of their line, or to various segments of the traffic. So it is not anything novel; out-of-pocket costs are not novel.

207 The COMMISSIONER: I think you have made that clear.

By Mr. ROOD:

Q16. By "out-of-pocket costs," is that term synonymous with added costs?

A. Yes, sir; or direct cost, or added cost.

Q18. The Georgia & Florida Railroad, and I am quoting from line 9 of Defendant's Exhibit No. 12, which shows traffic producing revenue of \$250,000, with direct or added or out-of-pocket cost of \$63,000, making a net contribution to the railroad treasury from carrying the mail of \$186,000 of revenue, equal to 396 per cent of the direct cost.

I ask you, in your opinion, was that traffic under those circumstances making a fair contribution to constant costs?

A. I would say in my opinion they undoubtedly would make a substantial contribution to the constant cost. Of course, any contribution—any cost or any margin or excess over the out-of-pocket cost is a contribution; five cents over the out-of-pocket cost would be a measurement of contribution that a traffic makes to the constant cost.

Q19. Well, this exhibit shows that the contribution was \$186,000, does it not?

A. Yes, sir.

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Testimony of J. D. HARDY:

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Direct Examination by Mr. STERN:

Q1. Mr. Hardy, prior to your occupying your present position, what positions did you have with the Post Office Department?

A. For approximately five years immediately preceding my appointment as General Superintendent, on May 1, 1939, I was Division Superintendent of the Railway Mail Service at New York, and for 17 years prior to my appointment as Division Superintendent at New York I was chief clerk of the Railway Mail Service at Harrisburg, Pennsylvania.

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Q3. Do you have to make any decisions wherein you have to evaluate the value of the services?

A. Yes, sir.

Q4. What studies have you made to prepare yourself to make such evaluations?

A. In evaluating the various classes of service, we take into consideration a number of factors, one, the necessity for the service, whether there is any present adequate service, the advantages to the public of the RPO service as compared with the closed spot service or Star Route service, whether the service is fully justified, whether it justifies the cost on the basis of the L.C.C. rates, the willingness of the carrier to carry the traffic, and whether there is any

available substitute service by other railroads or contract service, which would provide the necessary service to the public.

209 Q5. Do you take into consideration the quantity of
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mail to be shipped?

A. Yes, sir; the value of the mail, as well as the class of the mail. For instance, there might be a considerable quantity of parcel post mail, but a limited amount of first class mail. We consider that feature, as to whether there is a sufficient quantity of first class mail to warrant the establishment of the service.

Q6. How about such questions as the quality of the service, for example, schedules of trains, or speed of the trains? Do you take that into consideration?

A. Yes, sir. We determine whether the carrier operates a passenger train, mixed train, and more particularly whether the schedules of those trains are such as to provide adequate service.

The public desires an early receipt of mail from their base offices, and they like as reasonably late closing of the mail as possible, so that the businessman can get his mail out during the day and get it to destination every night. If the schedule is such as to provide for that service it is a determining factor in the establishment, or the continuance, of the service.

Q7. Did you have any method of checking what the amount of the service you require was on the Augusta & Madisonville?

A. Yes, sir; the chief clerk in charge of that line is required to make periodical inspections of the service
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210 on a Class A line, and he is required to make a complete inspection of every train every two years. Those inspections determine the quantity of mail carried, the various classes of mail carried, and it records the time clerk's report for duty, and the en route time over the road, and the amount of mail distributed en route, as well as the storage mails carried.

Q8. Have you those inspection reports for the period between 1930 and 1938?

A. Yes, sir; I have the inspection reports for Trains 4 and 5 made. Train 4 was inspected on April 7, 1932. Train 5 was inspected on April 8, 1932. Train 4 was again inspected on June 7, 1934, and Train 5 on June 8, 1934. Train 4 was again inspected on March 15, 1935, Train 5 on March 14, 1935. Train 4 was inspected on April 8, 1937 and Train 5 on April 7, 1937.

Q9. And you have the inspection reports of those dates that you mention?

Mr. STERN: I offer them in evidence.

Mr. HITT: No objection.

The COMMISSIONER: They will be marked Defendant's Exhibit No. 23 and will be accepted as one exhibit.

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Q18. Mr. Hardy, taking all the factors you have mentioned into consideration, what, in your opinion, was the value of 15-foot compartment service on this line between the years 1931 and February, 1938?

211 Mr. HITT: Wait a second. The value from what point of view?

Mr. STERN: The reasonable value of the service. That is all I need to ask, I think.

The COMMISSIONER: He has testified that he has valued it or evaluated it, I forget which, using a lot of factors, and while he was going that,—I had forgotten for what purpose he was evaluating it.

If it is for how much the Government might have been willing to pay, or whether the Government might have been willing to engage the service on the basis of the rates already fixed for that class of railroad.

Mr. STERN: I am not asking him whether the Government was willing to pay it, but if they wanted that kind of service, what is its value. It is what a willing buyer or a willing seller of that kind of service agree upon. That is the proper test. Now, this witness says he took into consideration all of the factors that might go into making up supply and demand.

For instance, he stated the willingness of the carrier to carry. He took into the consideration the fact there was a

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ceiling made by the I.C.C. rates.

He took into account that the user of such service might use alternative methods. He is an expert in the field, and he wants to give some opinion generally.

212 The COMMISSIONER: I have some question as to whether or not he has qualified himself as an expert on the fixing of the value of such service, and I don't know as there is any such thing as an expert on that. He can't testify an instance where he has done that, I don't think. Have you ever valued the service of the kind described in terms of money, other than for the purpose of determining whether or not you would establish or discontinue a mail service?

The WITNESS: That is, to establish the rate?

The COMMISSIONER: Yes, have you ever valued it for the purpose of establishing a rate which you would pay?

The WITNESS: No, sir.

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Q25. When you made a decision concerning continuance of this service in 1938 or 1939, at that time were you familiar with the prior history from 1930 up to the period upon which you were acting?

A. Only as indicated in the recommendation of the field officials, which is a part of the record submitted.

Q26. Well, at that time did you have these inspection reports before you?

A. I had the inspection report for 1938.

Q27. And that is the one you testified treated of the same number of units as the prior years?

A. Yes.

Q28. Now, I come back to the question which was objected to and the objection overruled.

Will you state what, in your opinion, was the value of services in a 15-foot car, the reasonable value?

A. On this line?

Q29. On this line.

213 A. Well, the fact that this service was being performed on a mixed train, that is, freight train and passenger train, on a freight train schedule, the only proper appraisal I could make of the value of that service would be that it was not worth what we are paying for the service as compared with a 15-foot mail compartment in a passenger train operating on a satisfactory schedule and on a faster schedule.

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Q33. You have that list, Defendant's Exhibit No. 2. Now, in evaluating the service, did you take into consideration such other points along the route, the value of the service to other points along the route, as are not contained in Defendant's Exhibit No. 2 when you reached an opinion in 1939 as to the question of discontinuing this road? Did you have before you any different situation which existed at that time than had existed between 1931 and 1938?

A. The records of the inspection reports and the recommendations submitted by the field officials indicated that conditions had been practically the same on that line prior to the time of the recommendation for the curtailment of the service.

Q34. I show you a paper containing writing in pencil,
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and underneath that a document dated July 5, 1939, containing your stamped signature.

I just want to ask you what those particular papers were. What is at the top of the paper?

214 A. This is a memorandum prepared by my assistant for my information and consideration in connection with the recommendation from the field for the proposed curtailment of the service.

Mr. HITT: Is that for 1935?

Mr. STERN: No, I am detaching that. It is 1939. I ask that that be marked for identification.

(Said paper was thereupon marked for identification "Defendant's Exhibit No. 24".)

Mr. STERN: (Handing paper to Reporter): I ask that the other paper be marked Defendant's Exhibit No. 25 for identification.

(Said paper was thereupon marked for identification "Defendant's Exhibit No. 25".)

By Mr. STERN:

Q35. Mr. Hardy, will you state generally what Defendant's Exhibit No. 25 is?

A. This was a letter which I dictated to the superintendent of the Railway Mail Service at Atlanta, Georgia, to the effect that we had given careful consideration—

Q36. (Interposing) It is your decision on the matter?
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A. It is my decision to make no change in the authorized space in the Valdosta & Madisonville RPO, and my reasons for that decision.

Mr. STERN: I offer Defendant's Exhibits No. 24 and 25 in evidence.

Mr. HITT: No objection, except the general objection that it relates to a later period.

215 Mr. STERN: Well, your Honor, it is based on the same data.

The COMMISSIONER: I overrule it.

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Cross Examination by Mr. HITT:

Q41. Did I understand your testimony on Friday to the effect that various factors determine whether or not you should use railway post office cars, and primarily and above everything was a convenience to the public?

A. Yes, sir.

Q42. To give the public service?

A. Where the service was commensurate to the expense the service to the public was the primary consideration.

Q43. I don't understand you said anything about weighing it against the cost of the service. I think you mentioned cost of the service was a factor, but primarily I thought you said it was the public convenience and necessity which controlled.

A. Well, I would still maintain that.

Q44. Is it your position that in general substantially the same conditions prevailed in the years of the period of the claim as in this 1938-1939 period when you were on the job?

A. Yes, sir.

Q45. And you understood that to be the testimony of Mr. Stephenson. Did you hear his testimony?

A. Not all of it; no, sir.

216 Q46. I believe you said that was your contention, didn't you, the conditions under which the mail was transported, and so forth, were substantially similar?

Mr. STREX: Yes, they were. The inspection report shows that.

By Mr. HITT:

Q47. About this contract with the railroads to pay higher rates of pay. You spoke something about your

authority, and I think mentioned five or six instances in which that was done. Did it ever come to your notice that the claimant here did approach the Post Office Department during this period and ask what the Department's policy was with respect to a special contract?

A. You mean verbally?

Q48. Yes.

Mr. STREX: Well, I think the witness' attention ought to be called to the matter of whom was approached.

The COMMISSIONER: If he can recall, all right; if he doesn't recall he may say so.

By Mr. HITT:

Q49. Do you know?

A. I do not. I have no recollection or record that any approach was made to the Department.

Q50. If a representative of the Department said to the carrier that it was against the policy of the Department to make a special contract with lines like the Georgia & Florida, but that that was confined to various special circumstances, like narrow gauge roads, or Rocky

247 Mountain roads, or the Hudson & Manhattan Railroad up in New York, and a few instances of that sort, and it was not customary to make them otherwise, would you say in your opinion that was a correct statement of the Government's policy?

A. I would not say that was a correct statement, sir.

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because upon a formal request of the department for a special contract, as provided for in the law, the Department makes a very thorough field investigation to ascertain whether they would be justified in recommending to the Second Assistant Post Master General, and reporting annually to Congress as they are required on all special contracts, such a special contract.

Now, we had within the last 60 days a case where the railroad companies had prepared a brief setting forth the physical condition, operating conditions, and revenues of their road, and requested the Department to give consideration to negotiating a special contract. The brief was referred to our field officials. They made a very thorough investigation. They ascertained the terrain over which that railroad operated, the condition of the roads, whether we could substitute Star Route or other classes of service to the public, and upon the conclusion of that investigation it was the opinion of the Railway Mail Service, the railway adjustment, that a special contract should be negotiated with that railroad, and such action was taken.

Q51. Have you any instances where such action was taken in the case of lines that are not specifically circumstanced, such as the Rocky Mountain roads, and such as the
218 Hudson & Manhattan roads, railroads like the Georgia & Florida that are not traversed by other lines crossing it, and so forth?

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A. Well, the Louisiana & Arkansas Railroad, while it probably traversed a more rugged terrain, it was comparable to this railroad in mileage, and I think in mail revenue.

Q52. Is this something that just recently has been done?

A. It was negotiated within the last 60 days.

Q53. Prior to that time did you have any instances of that character?

A. Not recently; no, sir.

Q54. You spoke of your conversations with the various mail traffic managers of the big systems. They were all representatives of the big systems where they handle mail in large volumes, or full postal cars, trainloads, and such as that, don't they?

A. Generally speaking, yes.

Q55. Where it is handled in several cars in a train, and where you have a storage car heavily loaded that makes a pretty fair revenue for the carriers, does it not?

A. They seem to think so. They want it bad enough.

Q56. It is the volume which makes it attractive. They wouldn't be looking for chicken feed. They are looking for volume to make it profitable?

A. Well, every railroad that is obliged to operate head-in equipment feels that the mail revenue is very helpful in

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219 taking care of the head-in traffic. Head-in traffic, sir, is mail and express and baggage which they carry in connection with their passenger business and as long as they are obliged to operate passenger trains, carry passengers and baggage and express, they invariably feel that the mail revenue is a very profitable adjunct to their regular traffic, because it is paid on an annual basis. It does not fluctuate. They don't carry an extra coach load of passengers one day and a vacant space the next, but this is constant revenue year in and year out which, in my experience, over a good many years of service, the railroad companies consider as very desirable revenue.

Q57. Is that true of big and little lines?

A. All lines, regardless of volume or size.

Q58. In other words, where the traffic requirement requires them to operate an express car and baggage car it is desirable also to handle mail?

A. Yes, sir.

Q59. Whatever the rate may be?

A. Yes, sir.

Q60. That is your understanding of their attitude?

A. Yes, sir.

Mr. Hirt: I believe that is all.

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Respecting Plaintiffs' Exhibits Presented at a Hearing Held by Agreement of Counsel on June 18, 1946, for the Sole Purpose of Receiving in Evidence of Certain Exhibits.

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COLLOQUY

Mr. Roop: I do not object to the introduction of this. My failure to object should not be construed as an endorsement of the title which appears on it.

The COMMISSIONER: Admitted.

Mr. HITT: I now have Exhibit No. 19, being pictures and graphs of the 15-foot railway post office compartment car space in the combination and mixed cars.

The COMMISSIONER: Admitted.

Mr. HITT: I thought, Mr. Commissioner, that this would probably help you visualize the situation as to what was in one of these railway post office cars.

The diagram shows the setup of the space, and the equipment in there, which is supplied by the railroad, according to the specifications of the Post Office Department, and contains racks, and so on, for the sorting of the mail.

The COMMISSIONER: Is this specifically what was done, or is this an example?

Mr. HITT: This is a picture of one of the very cars.

The COMMISSIONER: It is a picture of one of the cars?

Mr. HITT: Yes, sir.

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Mr. ROOD: On your Railroad?

Mr. HITT: On the Georgia & Florida Railroad.

The COMMISSIONER: Admitted.

Mr. HITT: Then we have, as Plaintiffs' Exhibit 20, what is headed "Approved and Standard Methods for Ap-
222 portionment of Unused Space in Combination and Mixed Cars". This I furnished you before in the form of a printer's proof.

The COMMISSIONER: Approved by the Interstate Commerce Commission?

Mr. HITT: Yes, sir.

Mr. ROOD: This is argumentative. This is just an excerpt from the 56 I.C.C. Order, and we would much prefer to have the Commissioner read those in, too.

This is not approved; it is not standard; in fact, it was specifically rejected by the carrier.

The COMMISSIONER: Are these volumes of the I.C.C. Reports?

Mr. HITT: Yes, sir, the citations are there; and furthermore, I purpose to offer a set of these I.C.C. Reports in full, which contain this same information, but this is Plan II drawn out of one of the Commission's decisions, and shows a description of it.

Mr. ROOD: There is Plan I and Plan II, and Plan III, and the Commissioner can make up his own plan.

Mr. HITT: This is all Interstate Commerce Commission's quotations except for the paragraph explaining what it is.

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Mr. ROOB: You have introduced this as an appendix to your requested findings, already, have you not?

Mr. HITT: I have referred to it, yes, sir. What I had intended to do was, to attach it for the information of the Commission.

Mr. ROOB: I do not object to its being attached to 223 his requested findings.

The COMMISSIONER: The objection to Plaintiffs' Exhibit No. 20 as evidence is sustained.

Mr. ROOB: I will consent to its being attached—not to his requested findings, of course.

Mr. HITT: Even if the objection is sustained it still remains in the record?

The COMMISSIONER: Yes, sir.

Mr. HITT: Here is Plaintiffs' Exhibit No. 21, a diagram entitled "Demonstration of the Inside 30-foot Compartment inside Fallacy".

In one of the Commission's decisions they refer to the location of the partition as having given the mail service a larger proportion of the unused space than they should have, and

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that is a misapprehension, and we thought this graph would show that very clearly.

Mr. ROOB: I object on the ground that it does not state the facts. It is a complicated argument, based upon the evidence. We do not concede there is any fallacy. I do not object to it being attached to the findings.

The COMMISSIONER: Objection sustained.

(Said diagram was marked for identification as Plaintiffs' Exhibit No. 21.)

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Mr. HITT: We offer, as Plaintiffs' Exhibit No. 24, 224 a statement entitled "Total Operating Revenues, Mail Revenues, and Net Railway Operating Income per Mile of Road, Georgia & Florida R.R. compared with all Class I and Class II Railways in the United States," for the calendar years 1931 to 1938, inclusive.

Mr. ROOB: Off the record.

(Here followed discussion off the record.)

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Mr. HITT: Mr. Commissioner, I offer, as Plaintiffs' Exhibit 26, a statement entitled "Extracts concerning special contracts with railroads", from hearings on Post Office Department appropriation bill for 1946-1947, in which the representatives of the Post Office Department stated the number of special contracts which they have with certain railroads, and the amounts paid, and the comparison of the amounts with what the I.C.C. prescribed rates would be.

The main point of this exhibit is to indicate the Post Office Department does not freely enter into special contracts, but it is their policy not to enter into them, except in very special cases, with roads in the Rocky Mountain region in particular.

I believe the Witness Hardy made reference to the recent

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contract with the Louisiana and Arkansas Railroad. The Post Office Department advises me that it is the Missouri & Arkansas Railroad, they told me that they made the contract with them because they were in the Ozarks, 225 where conditions were similar to those in the Rocky Mountain region.

Mr. ROOB: If you want to get more evidence with regard to special contracts, I have no objection to your recalling Mr. Hardy to the stand.

The COMMISSIONER: He is offering this by way of a statement made to Congress, and I presume it is an admission of some kind.

Moreover, I am not going to open up the evidence for any more testimony.

Mr. HITT: Off the record.

(Here followed discussion off the record.)

The COMMISSIONER: The exhibit will be received an excerpts from the hearings, and the contents of it will be given only such effect as will be determined or that may be given to the original document itself.

As I see it, the offered exhibit adds nothing to the original document, which the court might consult without it being offered.

(Said "extracts concerning special contracts with railroads" was marked "Plaintiffs' Exhibit No. 26", and made a part of this record.)

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Plaintiffs' Exhibit No. 3

COPY

Witness: Todd

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. 9200

In the Matter of the Petition of the GEORGIA & FLORIDA RAILROAD, and W. V. GRIFFIN and H. W. PURVIS, its Receivers, for a Re-Examination of Rates for the Transportation of the United States Mail.

ANSWER OF THE POSTMASTER GENERAL TO PETITION FOR
REOPENING, REHEARING AND RECONSIDERATION

VINCENT M. MILES,
Solicitor of the Post Office Department.

WILLIAM C. O'BRIEN,
Attorney, Post Office Department.
FOR THE POSTMASTER GENERAL.

February 11, 1944.

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. 9200

In the Matter of the Petition of the GEORGIA & FLORIDA RAILROAD, and W. V. GRIFFIN and H. W. PURVIS, its Receivers, for a Re-Examination of Rates for the Transportation of the United States Mail.

ANSWER OF THE POSTMASTER GENERAL TO PETITION FOR
REOPENING, REHEARING AND RECONSIDERATION

Comes now the Postmaster General, defendant in the above entitled cause by his attorneys and for answer to the petition for reopening, rehearing and reconsideration, respectfully states:

- (1) Defendant denies the allegations of paragraph one of the petition but avers that the Commission in 192 I.C.C., 779-781, found that to meet the "total claim of the carrier for increased compensation."

"Would require an increase in compensation of 87.40 per cent" upon the basis of 1931 operations. Defendant admits that increased compensation was denied, but avers that just compensation to the carrier for the carriage by mail had already been fixed by the Commission effective August 1, 1928, 144 I.C.C. 675.

228 (II) Defendant denies the allegations of paragraph II of the petition as to the basis of the Commission's decision in 214 I.C.C. 66, and avers that the Commission gave consideration to many other facts and factors in arriving at said decision, as set forth therein and that the purported quotation therefrom in the petition is incomplete and misleading. Defendant admits that increased compensation was denied the carrier.

(III) Defendant admits the allegations of paragraph III of the petition but, upon the authority of *U. S. v. Griffin, et al., Receivers*, 303 U. S. 226, denies the legality of the order of the three-judge United States District Court, Augusta Division, Southern District of Georgia.

(IV) Defendant denies the allegations of paragraph IV of the petition but avers that the Supreme Court held (303 U. S. 226, 238) that:

"... a suit under the Urgent Deficiencies Act to set aside an order concerning mail pay is not primarily one against the Commission. Primarily, it is a suit against the United States and the United States can be sued only when authority so to do has been specifically conferred.

The Railway Mail Pay Act does not confer that authority.

Decree reversed."

229 (V) Defendant neither admits nor denies the allegations contained in paragraphs V and VI of the petition as to petitioners suit in the Court of Claims but alleges that the so-called "Actual cost study," which petitioner asserts "has just now been completed for the entire nine months of the year 1931", and "to show the results for the twelve months of 1932 as a full year" does not constitute any proper evidence for consideration by this commission nor any proper basis for reconsideration of the numerous and repeated decisions of the Commission on the subject of just compensation for the petitioner. Such a so-called "actual cost study" was not made in accordance with the long established practices of

the Commission in Railway Mail Pay cases, which requires a joint study by both the petitioning carrier and the Post Office Department of the operations, space and costs of service during a mutually agreed upon period of service, by which procedure only can a reliable, and properly checked and adjusted set of figures and compilation of facts be secured to aid the Commission in its decision upon fair and reasonable rates.

Concerning cost studies the three-judge Georgia Court to which petitioner refers in paragraph III of petition said:

230

"Neither applicant nor this Court entertains the view that the hypothetical cost is necessarily conclusive. It is merely the *fairest method* that has been devised. If 'actual cost' as to each item be required applicants would be helpless and the Commission would be reduced to guessing."

Defendant, further answering paragraphs V and VI of the petition avers that petitioner has in prior proceedings repeatedly insisted upon the fairness and adequacy of the cost figures before the Commission and upon which it based its decisions and upon which the petition sued the Commission twice in the three-judge Georgia Court, and upon which it defended the Commission's suit in the Supreme Court and upon which petitioner instituted suit against the United States in the Court of Claims.

In their brief, p. 12 *et seq.*, before the Commission, Docket 9200, dated August 7, 1935, when the proceedings were reopened upon the Commission's own motion following the first decision of the three-judge Court, Counsel for petitioner argued at length the soundness for rate making purposes of the cost study which it is now proposed to supplant by the unchecked and uncheckable "actual cost study" upon which the instant petition is based. As to the original cost study petitioner's counsel said "All other mail cost ascertainment have been made on the same formulas. *No cost ascertainment could possibly be made which would be proof against the same criticism that they are not mathematically exact.*

231

"(that) there should be no real difficulty over the cost ascertainment in the particular instance on the Commission's own formulas for roads both larger and smaller than the Georgia & Florida . . ."

In the same brief (p. 12) counsel for petitioner argued that:

"The Commission has heretofore expressly said, in many previous decisions, that this very method of cost

ascertainment is a sufficiently reliable basis for conclusions as to the reasonableness of the rates of pay

(VI) Petitioner's compensation for carrying the mail has been considered by the Commission upon four separate occasions. The pertinent facts of the case have been carefully ascertained and submitted to the Commission; the regularly and properly made joint cost study has been considered by the Commission and accepted by it and by the Post Office Department and the carrier as sufficient for its purpose; there is now no ground for the submission to or the consideration by the Commission of any so-called "actual cost study" just now completed for 1931 and 1932, which was not made in accordance with the accepted, standard practice in this class of rate cases.

(VII) Wherefore, defendant, the Postmaster General, by his counsel, respectfully prays that the petition herein for reopening, rehearing and reconsideration and reargument be denied.

Respectfully submitted,

(Signed) VINCENT M. MILES

VINCENT M. MILES

Solicitor of the Post Office Department

(Signed) WILLIAM C. O'BRIEN

WILLIAM C. O'BRIEN

*Attorney for the Post Office Department
Counsel for the Postmaster General.*

February 11, 1944.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, Georgia & Florida Railroad, and W. V. Griffin and H. W. Purvis, Receivers, Augusta, Georgia, and Moultrie Hitt, 537 Woodward Building, Washington, D. C., and G. Kibby Munson, Transportation Building, Washington, D. C., attorneys for applicants, by mailing by first-class mail a copy thereof properly addressed to each party.

Dated at Washington, D. C., this 11th day of February, 1944.

(Signed) WILLIAM C. O'BRIEN

WILLIAM C. O'BRIEN

Attorney for the Post Office Department.

DESCRIPTION OF JUST WHAT IS A 15-FOOT POST OFFICE
 88,192 (9% of the Total Pay Received by the Georgia & Florida is for handling 15-Ft. Post Offices)

POST OFFICE
 11ing 15-Ft. Post Offices)

Plaintiffs Exhibit 19

STORAGE END

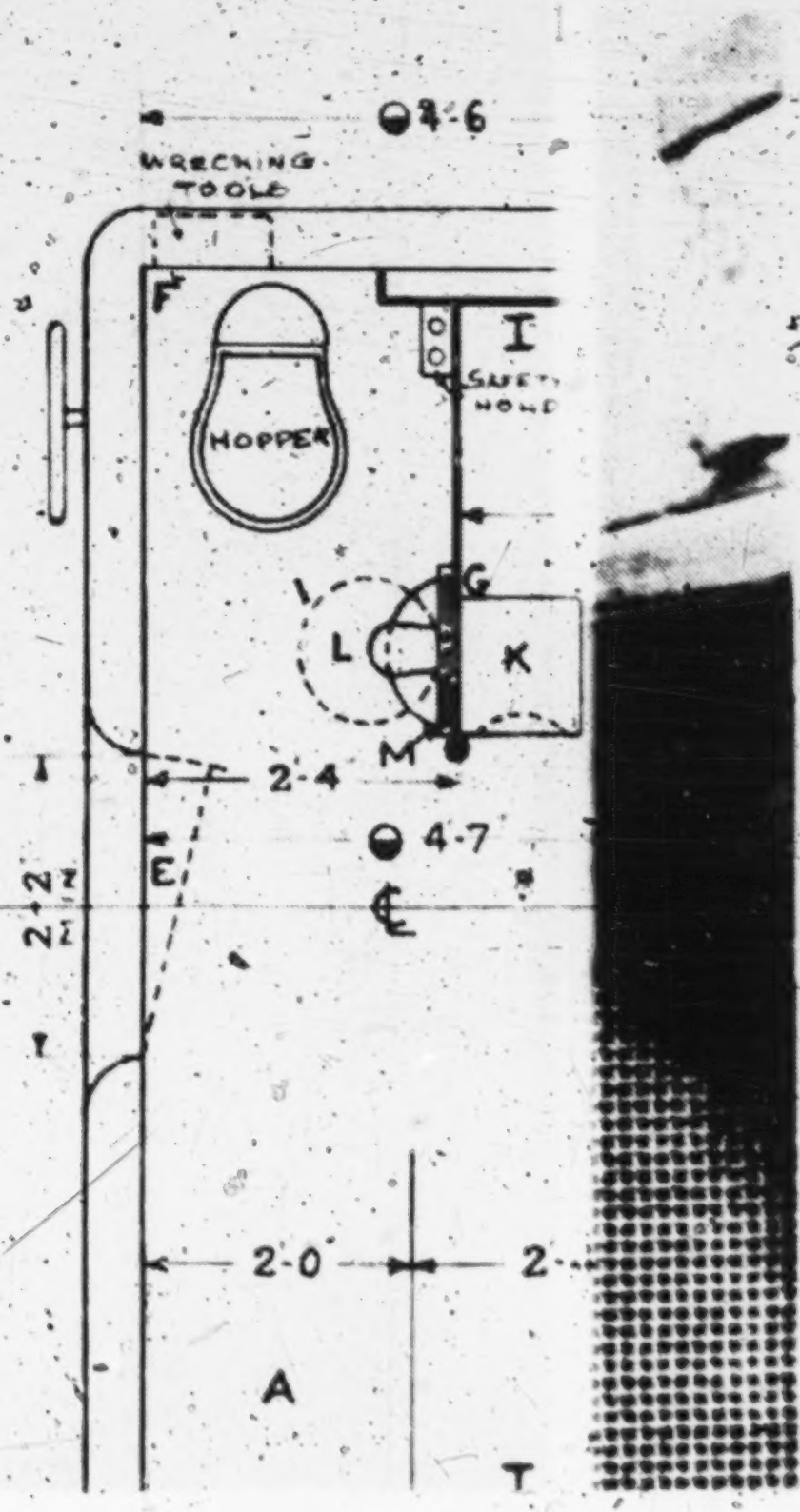
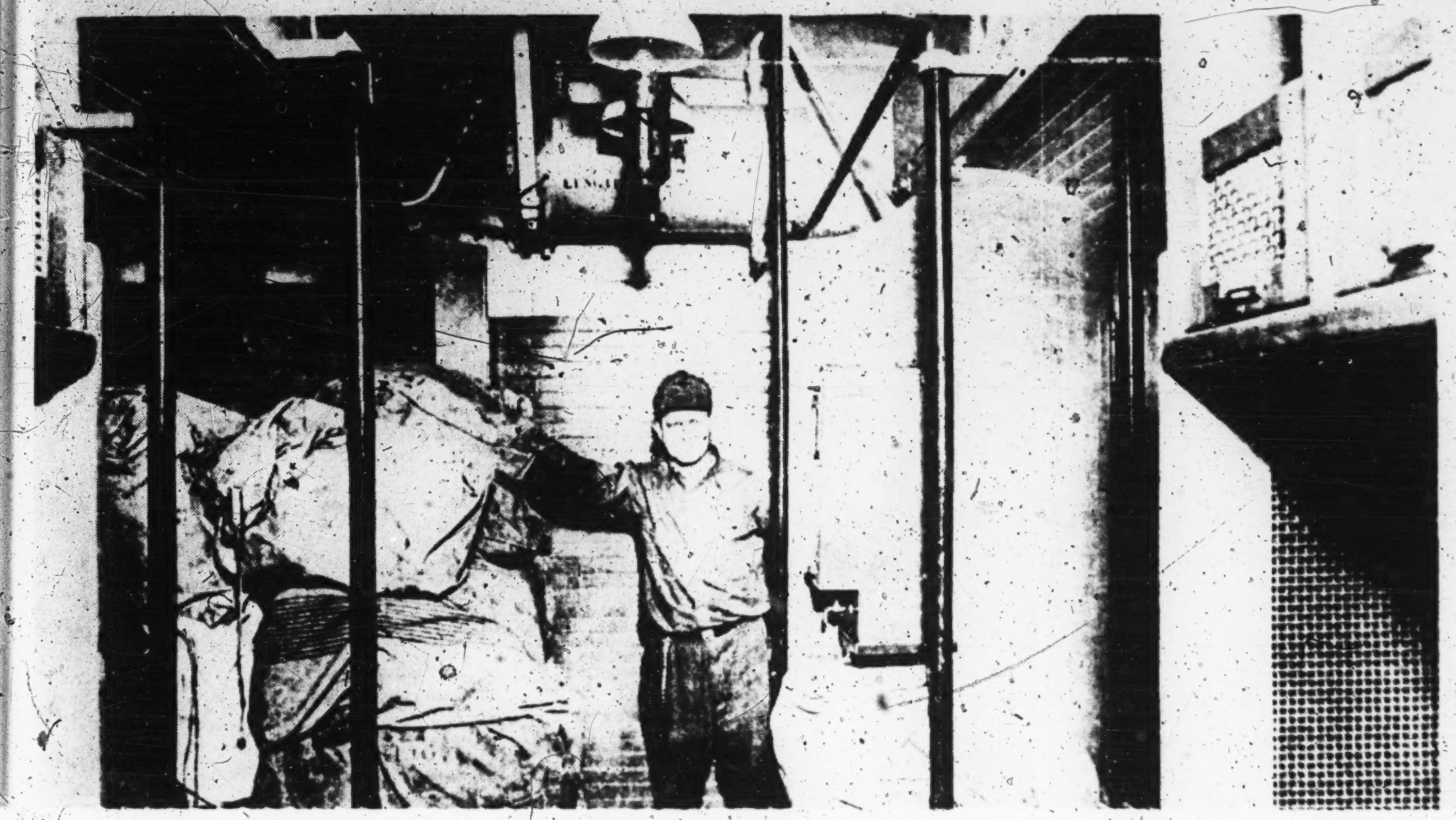
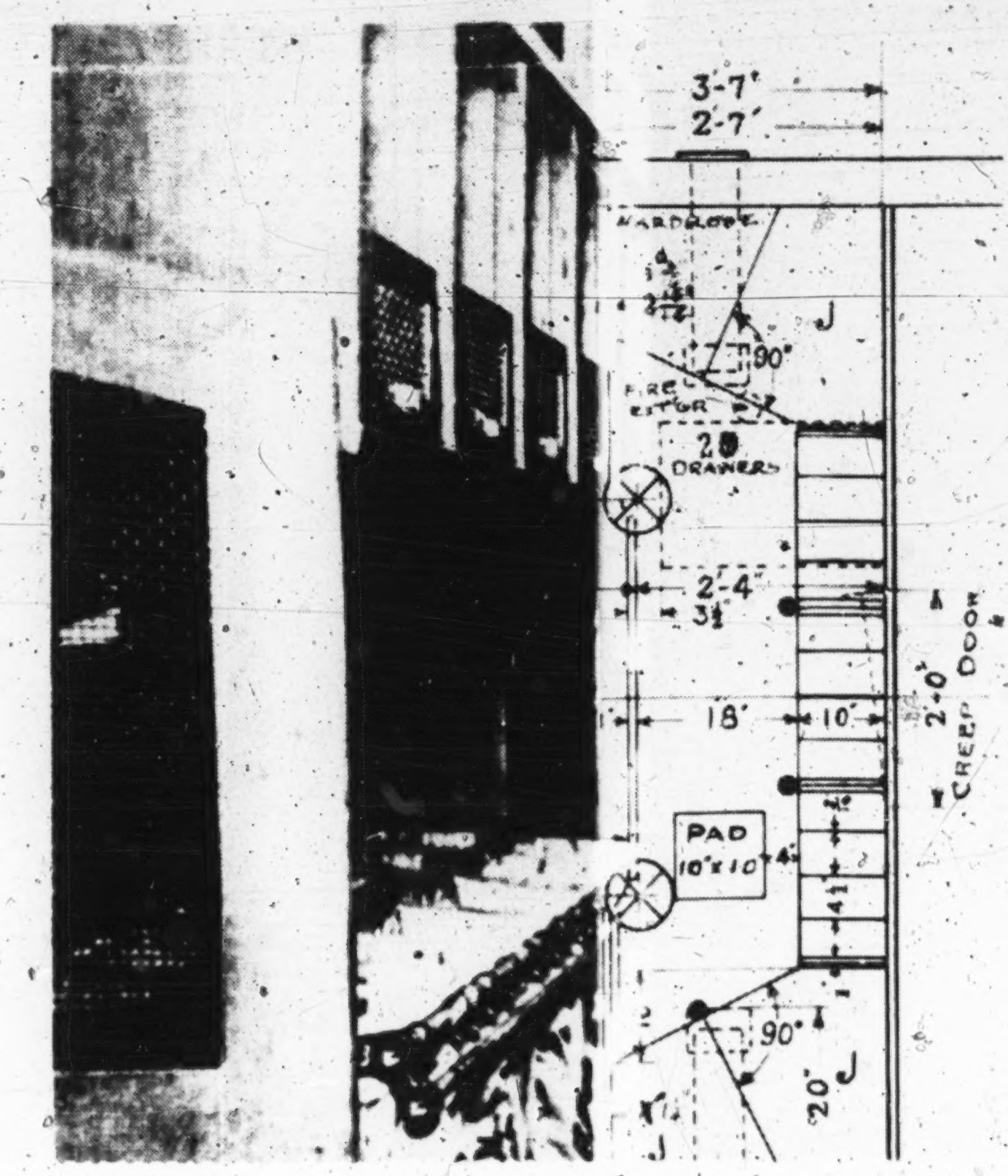
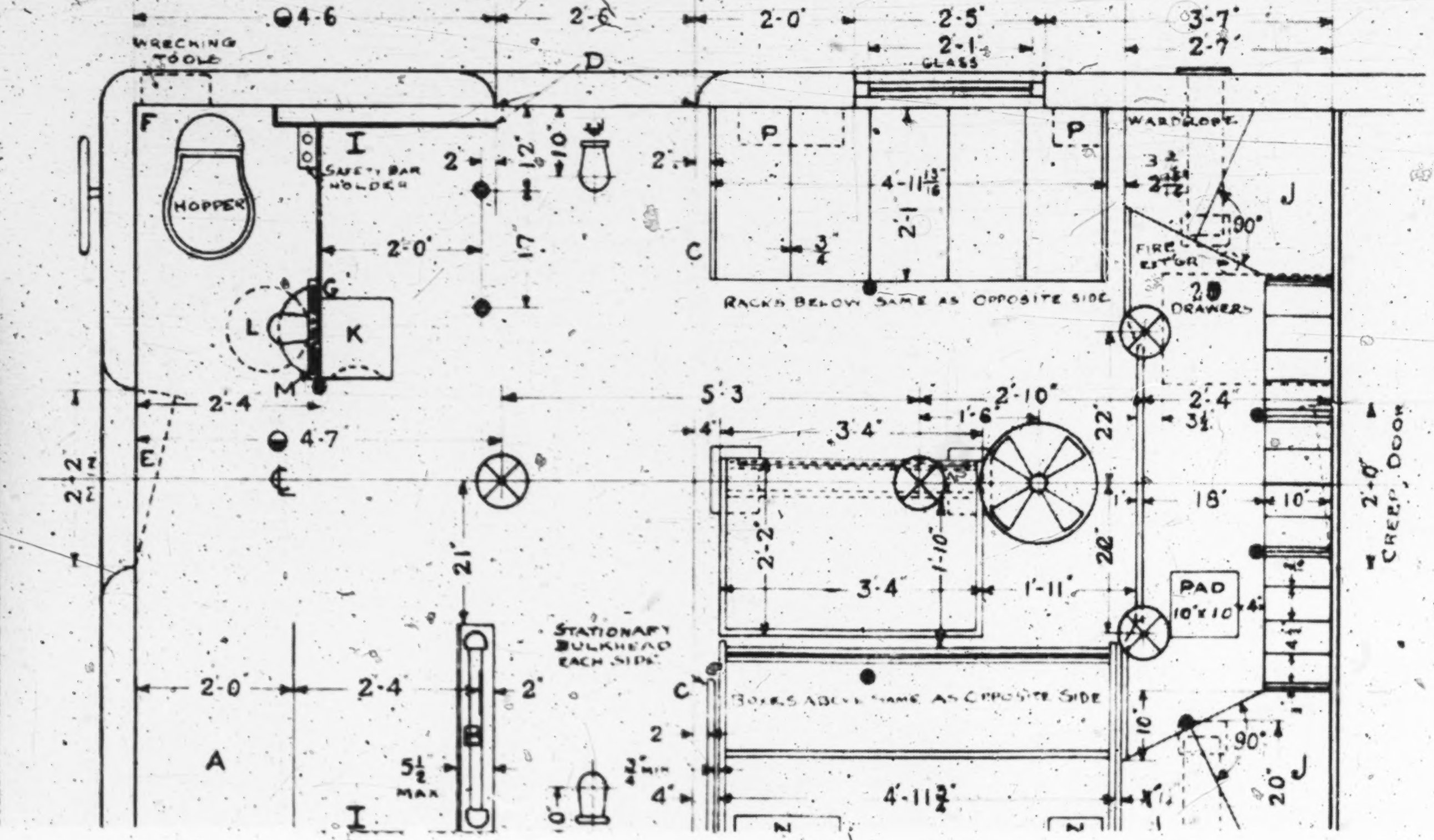
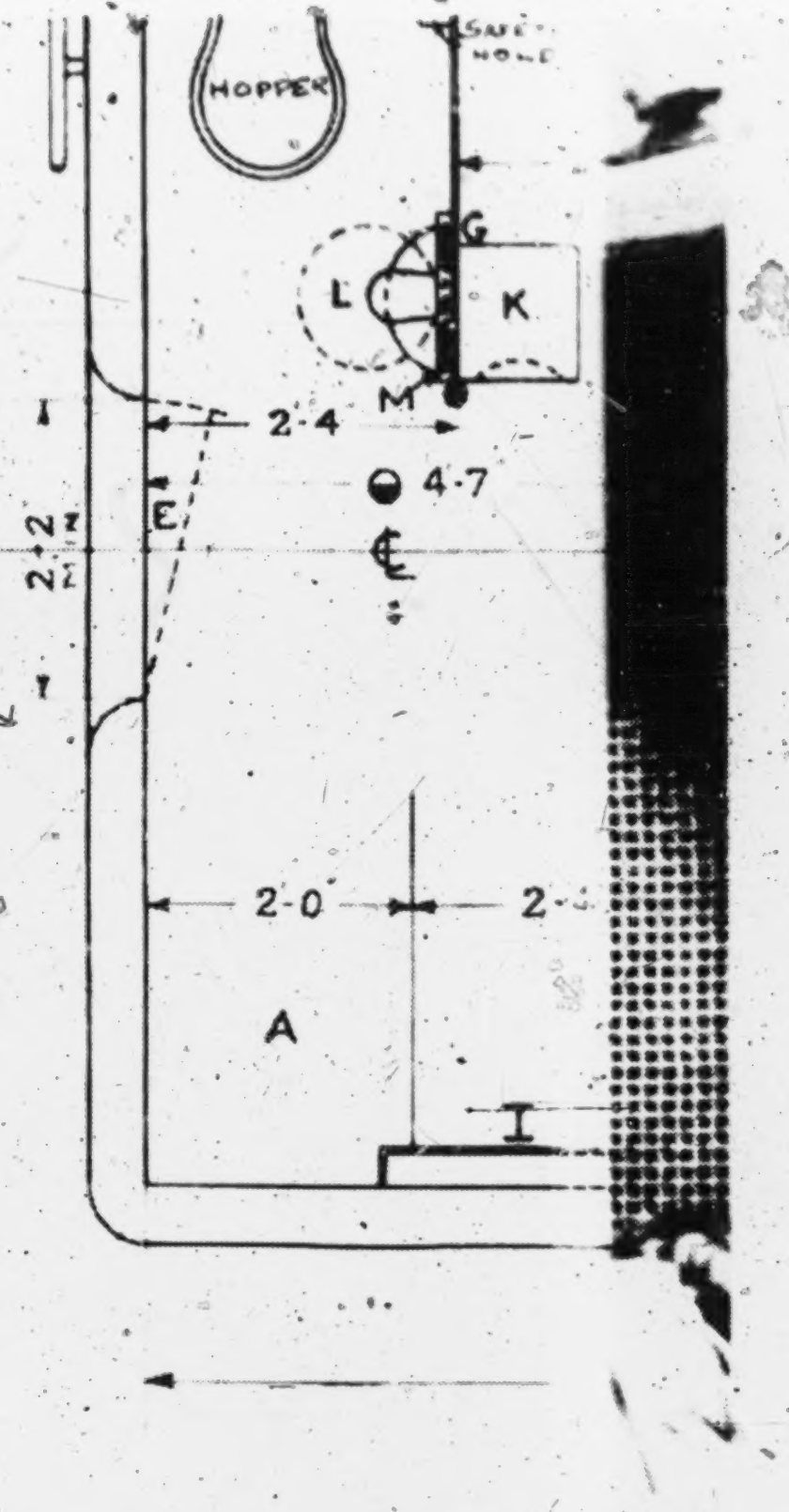
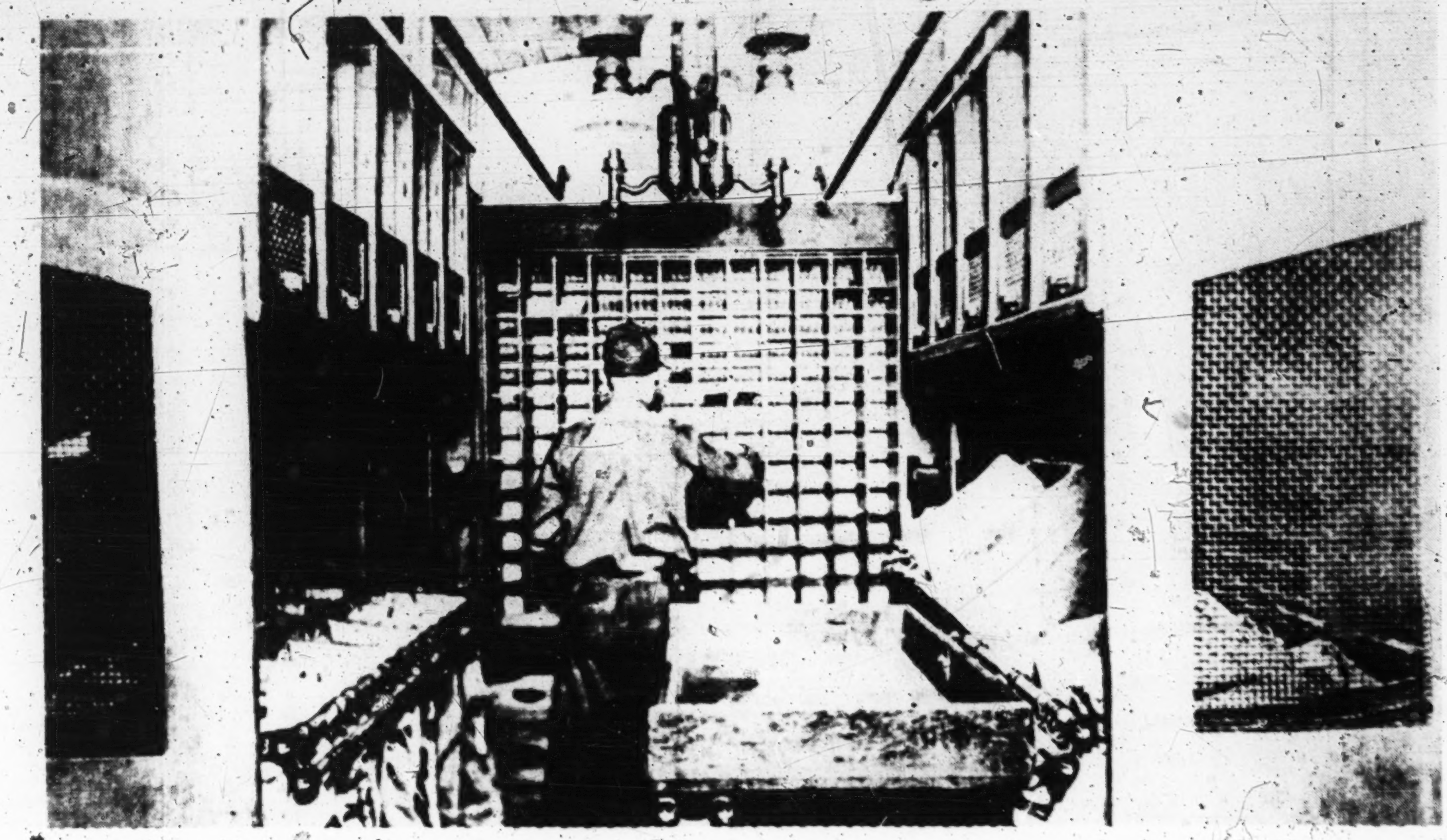


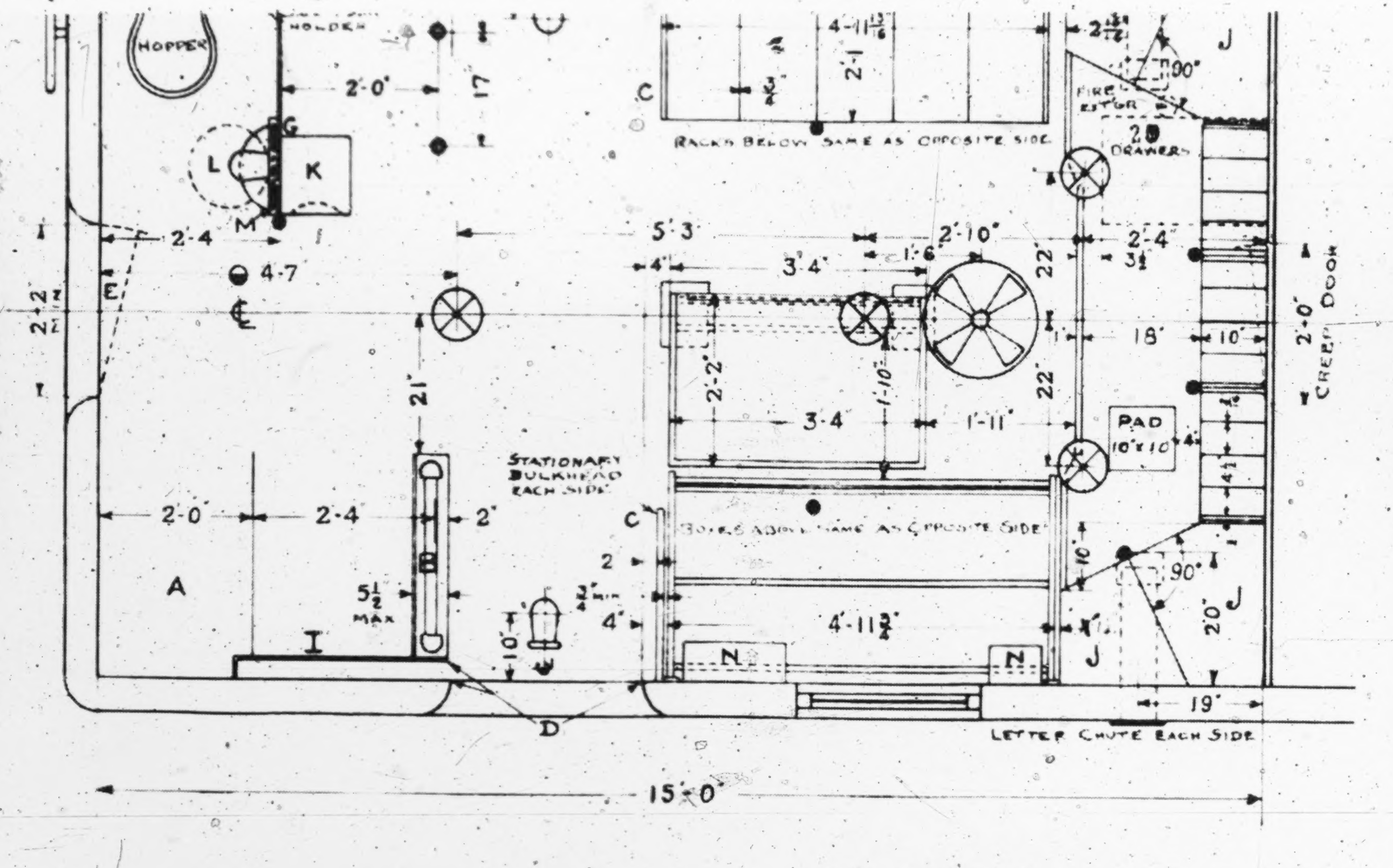
DIAGRAM OF ENTIRE 15 FEET



DISTRIBUTING END

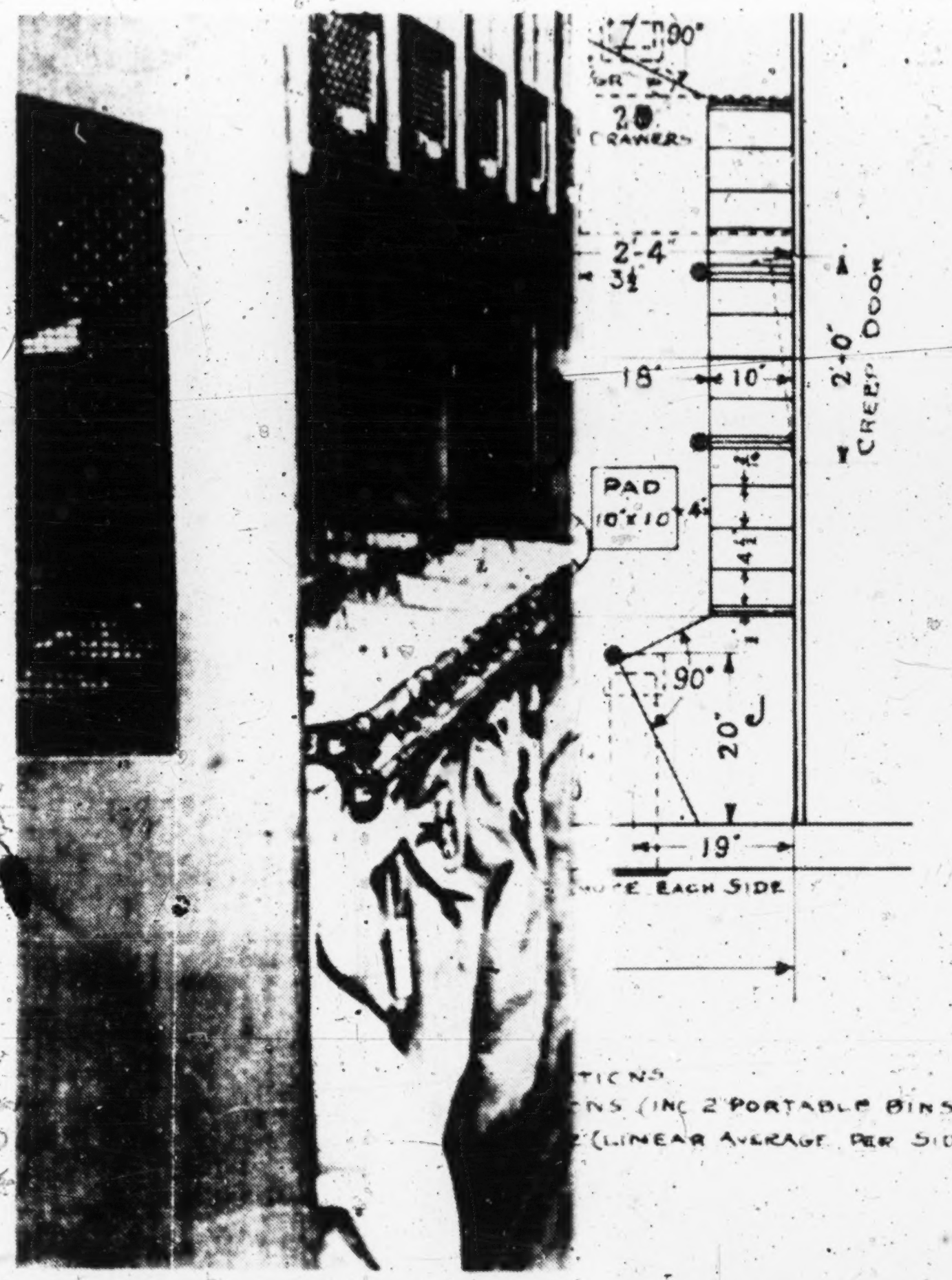


FLOOR PLAN FOR



FLOOR PLAN FOR 15' MAIL APARTMENT

(144 LETTER SEPARATIONS
 49 PAPER SEPARATIONS (IN 2 PORTABLE BINS)
 3" 2" STORAGE STALL (LINEAR AVERAGE PER SIDE)



- (1) A 15-Ft. Apartment is a Post Office in which a Postman Receives, Assorts and De Receives, Assorts and Delivers Mail in Transit (The rate covers: (A) Office space, with light, heat and service (B) Transportation of Postman (C) and the Mail)
- (2) The Mail Volume is Heavy at some Stages and Light at Others — but Space must be S — but Space must be Sufficient for Maximum use anywhere on Run
- (3) A 15-Ft Apartment is the Minimum size of Travelling Post Office

COPY

PLAN 2, AS THE APPROVED AND STANDARD METHOD FOR THE
APPORTIONMENT OF UNUSED SPACE IN COMBINATION AND
MIXED CARS

In the original railway mail pay case (56 I.C.C. 1), after mature consideration of the merits of various methods proposed by the carriers and the Post Office Department for the fair apportionment of unused space in combination and mixed cars, the Interstate Commerce Commission gave its approval to Plan 2 of the Post Office Department, and that method has been followed in all subsequent mail pay cases before that Commission.

In the second railway pay case methods for the apportionment of unused space were further discussed, and Plan 2 reconfirmed, as follows:

"The cost study is based upon space data obtained during the 35-day period from September 16 to October 20, 1925. The total space operated in passenger-train service was reported, together with space operated for passenger service proper (including baggage and miscellaneous), express and mail services, and the unoccupied space in combination and mixed cars. The forms upon which data were reported were agreed upon by the department and the carriers.

In general, space in full cars was assigned to the service for which the car was used. Combination cars are cars partitioned off for the carriage of more than one kind of traffic, such as passenger-baggage, passenger-express, passenger-mail, baggage-express, and baggage-mail cars. Mixed cars are those without partitions in which are carried two or more classes of traffic. Space in combination cars was allocated by the carriers according to the space used. The authorized mail space was considered the space used and was directly allocated. Traffic, other than mail, in the baggage end of such cars and in mixed cars was measured and space allocated accordingly." (144 I.C.C. 675, 679).

* * * * *

235 "There is no disagreement as to the total-car-foot miles of service operated. There is disagreement as to the disposition that should be made of the unused space. The greater part of such space was operated

in connection with combination and mixed cars." (144 I.C.C. 675, 680).

"We have considered the combination cars to be a mixed traffic car and have dealt with the unused space therein in the same manner as in any other mixed cars irrespective of the existence of the partition separating the apartment from the rest of the car." (144 I.C.C. 675, 681).

PLAN I

"In Plan I, apartments in combination cars are segregated. *Space in passenger apartments is allocated to passenger service, space in mail apartments is allocated to mail service and the unused space in the remainder of the car, or baggage end, combined with the unused space in mixed cars, is apportioned to passenger, express, and mail services on the ratio of space used by each service in the baggage end of combination cars and in mixed cars. The apartments in combination cars are not apportioned any part of the unused space in the baggage end of such cars.* Plan I is based upon the assumption that an apartment is complete in itself, that it is operated independently of the remainder of the car and is not responsible for any unused space necessarily operated in the said remainder of the car. The department contends this theory is justified upon the ground that an apartment carries its own unused space." (144 I.C.C. 675, 681).

PLAN II

"Plan 2 recognizes the fact that an apartment is only a fraction of a car; that the operation of that fraction requires the operation of a whole car and that the operation of a whole car necessarily causes the operation of a certain amount of unused space in the remainder of the car. *The justification for apportioning some of this unused space to the service using the apartment in that the car is the unit of operation and that the unused space outside the apartment, necessarily operated in a combination car to supply the space required for service in such cars, is due to the apartment service as much as the services in the baggage end.*" (144 I.C.C. 675, 681).

"In Plan 2, the apportionment is made according to the method used by us in the original case and used by the carriers in the instant case, that is, in proportion to the space used by each service in other than full cars." (144 I.C.C. 675, 680):

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PLAN 3

"Subsequent to the hearing the department submitted another plan, referred to as Plan 3, for apportioning unused space in combination and mixed cars. The method is simply to apportion such space, in proportion to the total space used by each service including, in the divisor, space in full cars as well as space in mixed and combination cars." (144 I.C.C. 675, 689).

* * * * *

"Plan 3 is based upon a different theory of apportioning unused space from that employed either in Plan 1 or Plan 2. In all the plans, except in Plan 3, and, to a lesser extent in Plan 1, the car is taken at the operating unit." (144 I.C.C. 675, 689).

* * * * *

"Cars devoted exclusively to one class of service (full cars) are considered properly chargeable only with the unused space in such cars and not with any portion of the unused space in other than full cars. This direct assignment of unused space in full cars is proper because such space is necessarily operated in connection with only the full cars. Cars used for two or more services (combination and mixed cars) are considered to be operated for those services and the unused space therein is considered as necessarily operated in connection with them. Direct assignments of the unused space in such cars is not possible because the amount properly assignable to each service using these cars cannot be directly determined. An apportionment must, therefore, be made. This apportionment is made in Plan 2, and in the plan used by us in the original proceeding, upon the ratios of space used by each service in such cars the authorized space being taken as the space used in the case of the mail. In plan 3, the unused space in these cars is also apportioned, but the apportionment is made upon the ratios of space used in such cars and the entire space in full cars. This method of apportionment is justified by the department upon the theory that the combination and mixed cars are not operated in common only for the services using them but are operated in direct relationship to full car operations. The department

contends that Plan 3 is the completion of the method used in Plan 2 perfected by extending it to take in the whole train. It is clear, however, that Plan 3, in part rejects the car as the unit, and uses the total allocated train space in apportioning the unused space in other than full cars. This is not an extension of Plan 2, but a departure from it. It can be justified only if it can be shown that the unused space in combination and mixed cars is necessarily operated in connection with full cars. It is argued that there is a relationship between the space used for baggage in combination and mixed cars and the space in full passenger cars in that baggage is carried for passengers in full cars as well as for passengers in combination cars. The space used for baggage in combination and mixed cars is not measured by the use made by passengers in full passenger cars. At the most, it is related only to the proportion of space used by the passengers in full cars for whom baggage is carried in combination and mixed cars. No operating relationship is shown in the record between mail space, express space, and miscellaneous space in combination and mixed cars, on the one hand, and mail space, express space, and the services included as miscellaneous, in full cars, on the other. Space in combination and mixed cars is not operated because of the operation of full cars, except to the limited extent noted in connection with baggage, but because of the requirements for service in less than full cars. (144 I.C.C. 675, 690).

* * * * *

"With respect to mail service, for example, 12 units of space are employed, only 3 of which are full-car units. Of the remainder, two are 30-foot, three are 15-foot, two are 7-foot, and two are 3-foot units. No operating relationship has been shown between the full-car units and the less than full-car units which would warrant charging full cars with some of the unused space in less than full cars."

"It is not necessary further to discuss Plan 3. The method suggested by us in the original proceeding, although not meeting the full claims of either the department or the carriers, is a reasonably fair method of determining the amounts of unoccupied space chargeable to each service." (144 I.C.C. 675, 691).

PLAINTIFF'S EXHIBIT 21

DEMONSTRATION OF THE "30 FOOT APARTMENT" FALLACY
(CONTENTION ON THIS POINT WAS NOT EVEN RAISED IN THE
ORIGINAL PROCEEDING BEFORE THE INTERSTATE COMMERCE
COMMISSION)

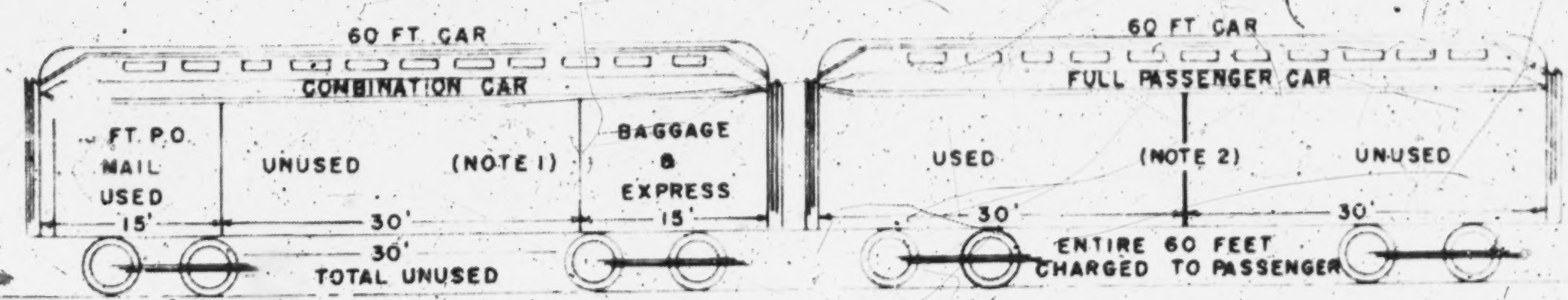
WHEN A 30 FOOT POST OFFICE IS FURNISHED ON A 15 FOOT AUTHORIZATION



MATHEMATICALLY DEMONSTRATED

COMBINATION CAR - 60 FT	FT	PERCENT
MAIL USED	15	12.5
MAIL UNUSED	15	12.5
BAG & EXP USED	15	12.5
BAG & EXP UNUSED	15	12.5
PASSENGER CAR - 60 FT		
PASSENGER USED	60	50.0
TOTAL	120	100.00

WHEN A 15 FOOT POST OFFICE IS FURNISHED ON A 15 FOOT AUTHORIZATION



COMBINATION CAR - 60 FT		
BAG & EXP USED	15	12.5
MAIL USED	15	12.5
30 FT UNUSED		25%
MAIL PROPORTION	15	12.5
BAG & EXP PROPORTION	15	12.5
PASSENGER CAR - 60 FT		
PASSENGER USED	60	50.0
TOTAL	120	100.00

(NOTE 1.) NO OTHER UNUSED SPACE IS CHARGED TO MAIL.
(NOTE 2) ALL SPACE IN FULL PASSENGER CARS IS CHARGED AGAINST PASSENGER SERVICE, EVEN IF ONLY PARTLY LOADED.
(ON NO DAY DURING THE 28 DAY TEST PERIOD SEPT. 28 TO OCT. 25 - 1931 WAS THERE INSUFFICIENT SPACE IN THE COMBINATION CAR FOR BAGGAGE AND EXPRESS)

THE MAIL'S PROPORTION OF TOTAL TRAIN SPACE IN EACH EXAMPLE IS EXACTLY THE SAME

THE AMOUNT OF UNUSED SPACE IS THE SAME REGARDLESS OF THE POSITION OF THE PARTITION

Plaintiffs' Exhibit 24

**TOTAL OPERATING REVENUES, MAIL REVENUES AND NET RAILWAY OPERATING INCOME PER MILE OF ROAD
GEORGIA & FLORIDA R.R. COMPARED WITH ALL CLASS I AND CLASS II RAILWAYS IN THE UNITED STATES
CALENDAR YEARS 1931 TO 1938 INCLUSIVE**

	AVERAGE MILES OF ROAD OPERATED (All Services)	TOTAL OPERATING REVENUES		MAIL REVENUES		NET RAILWAY OPERATING INCOME	
		Amount	Per Mile Road	Amount	Per Mile Road	Amount	Per Mile of Road
	1	2	3 = 2 ÷ 1	4	5 = 4 ÷ 1	6	7 = 6 ÷ 1
YEAR 1931							
GEORGIA & FLORIDA RR	463.61	\$ 1,357,711	\$ 2,929	\$ 37,904	\$ 82	Def. \$ 92,091	Def. \$ 199
Class I Rys.—U. S. (155)	242,175.83	4,188,343,244	17,295	105,423,015	435	525,627,852	2,170
Average Miles Per Road	1,562.42						
Class II Rys.—U. S. (233)	12,737.34	47,830,221	3,755	*	*	3,363,665	264
Average Miles Per Road	57.12						
YEAR 1932							
GEORGIA & FLORIDA RR	463.61	818,829	1,766	35,716	77	Def. 200,009	Def. 431
Class I Rys.—U. S. (151)	241,519.24	3,126,760,154	12,946	97,161,716	402	326,298,008	1,351
Average Miles Per Road	1,599.46						
Class II Rys.—U. S. (229)	12,725.15	34,435,580	2,706	*	*	220,100	17
Average Miles Per Road	55.56						
YEAR 1933							
GEORGIA & FLORIDA RR	465.00	975,719	2,098	35,533	76	Def. 21,191	Def. 46
Average Miles Per Road							
Class I Rys.—U. S. (150)	240,631.00	3,095,403,904	12,864	91,870,415	382	474,295,613	1,971
Average Miles Per Road	1,604.20						
Class II Rys.—U. S. (211)	12,451.00	35,332,034	2,838	*	*	3,443,699	277
Average Miles Per Road	59.00						
YEAR 1934							
GEORGIA & FLORIDA RR	454.00	1,029,239	2,267	33,770	74	Def. 61,605	Def. 136
Class I Rys.—U. S. (144)	238,951.00	3,271,566,822	13,691	91,139,847	381	462,652,379	1,936
Average Miles Per Rd.	1,659.38						
Class II Rys.—U. S. (196)	11,845.00	37,091,034	3,131	*	*	3,322,334	280
Average Miles Per Rd.	57.50						
YEAR 1935							
GEORGIA & FLORIDA RR	409.00	1,093,704	2,674	27,063	66	19,177	46
Class I Rys.—U. S. (144)	237,932.00	3,451,929,411	14,508	92,052,257	387	499,819,118	2,101
Average Miles Per Rd.	1,652.30						
Class II Rys.—U. S. (196)	11,168.00	38,680,042	3,463	*	*	5,298,794	474
Average Miles Per Rd.	56.97						
YEAR 1936							
GEORGIA & FLORIDA RR	409.00	1,181,662	2,889	27,160	66	Def. 13,859	Def. 34
Class I Rys.—U. S. (139)	236,878.00	4,052,734,139	17,109	95,574,820	403	667,347,115	2,817
Average Miles Per Rd.	1,704.15						
Class II Rys.—U. S. (189)	11,053.00	45,987,534	4,161	977,306	88	7,427,537	672
Average Miles Per Rd.	58.48						
YEAR 1937							
GEORGIA & FLORIDA RR	408.00	1,291,201	3,165	26,381	65	34,875	85
Class I Rys.—U. S. (136)	235,376.00	4,166,068,602	17,700	97,983,876	416	590,203,925	2,507
Average Miles Per Road	1,730.70						
Class II Rys.—U. S. (193)	11,439.00	50,359,901	4,402	974,892	85	7,013,623	613
Average Miles Per Road	59.27						
YEAR 1938							
GEORGIA & FLORIDA RR	408.00	1,111,065	2,723	26,457	65	Def. 37,028	Def. 91
Class I Rys.—U. S. (136)	234,482.00	3,565,490,753	15,206	95,963,353	409	372,873,771	1,590
Average Miles Per Road	1,724.13						
Class II Rys.—U. S. (190)	10,862.00	42,028,546	3,869	885,724	82	3,853,061	355
Average Miles Per Road	57.17						

* No available.

Def.—Deficit.

Source: Statistics of Railways in the United States Published by the I. C. C. Annually.

COPY

EXTRACTS CONCERNING SPECIAL CONTRACTS
WITH RAILROADS

FROM

POST OFFICE DEPARTMENT APPROPRIATION BILL FOR 1946,
Hearings before the Subcommittee of the Committee
on Appropriations House of Representatives,
79th Congress First Sessions on the
POST OFFICE DEPARTMENT APPROPRIATION BILL
for 1946.

(January 8, 1945)

Page 156. *Apportionment of Appropriation*

Mr. LUDLOW. This appropriation covers railroad transportation and mail-messenger service?

Mr. PERDUM. Yes, sir.

Mr. LUDLOW: How is that apportioned?

Mr. STEPHENSON. It is not apportioned; we use what is necessary for either mail-messenger service or for railroad transportation.

Mr. LUDLOW. How is that divided; what is the volume of each?

Mr. STEPHENSON. For regular railroad service, 1945, the estimated cost is \$113,951,431; for emergency service, \$20,005,845; and for special contracts \$149,521; a total for railroad service of \$134,106,797. The total estimated cost for 1945 for mail-messenger service amounts to \$11,571,141.

Difficulty in Obtaining Railroad Space

Mr. LUDLOW. In view of the enormous volume of mail to be handled, do you find difficulty in getting railroad space?

Mr. PERDUM. I might answer that in this way, Mr. Chairman. At times the railroad companies are a little hard put, owing to the great demands made upon the rail-

Page 157. roads by our military forces. But the railroads have cooperated in a most splendid manner, and I think we have gotten along very well in that respect.

As a matter of fact, I think the cooperation between the railroad companies and the Post Office Department during the past holiday season has been something for which we can particularly feel very grateful.

There were several points last year at large railroad stations where there was congestion. The year before last we had serious congestion at the railroad station in Washington, D. C.

241 By our officials working closely together with the railroad officials and laying their plans early, beginning the real work months before the holiday season, during the past holiday season we did not have any real congestion at any railroad point.

Mr. LUDLOW. Your emergency requirements are unpredictable, of course. Do you find the railroad companies responsive and able to meet your requirements?

Mr. PURDUM. They are most responsive, Mr. Ludlow, and invariably they meet our requirements.

Number of Contracts with Railroads

Mr. LUDLOW. With how many railroad companies do we have contracts for the transportation of mail?

Mr. STEPHENSON. There are 255 railroad companies engaged in transportation of the mails.

Mr. LUDLOW. How many routes?

Mr. STEPHENSON. Five hundred and thirty-one routes.

Mr. LUDLOW. Are a good many trains still being discontinued, thus putting the mail on star routes?

Mr. PURDUM. Very few at present and for sometime past.

Mr. LUDLOW. Do you know how many were discontinued during 1944?

Mr. PURDUM. We can furnish that information for the record. There were 24 trains discontinued during the fiscal year 1944.

Special Railroad Contracts

Mr. LUDLOW. You spoke a few minutes ago about your special contracts. Will you put a list of those special contracts into the record? They are found on page 502 of the justifications.

Mr. PURDUM. Yes, we will put that in the record.

SPECIAL RAILROAD CONTRACTS IN EFFECT ON JULY 1, 1944

Company	Contract rate per annum	Estimated cost per annum at regular railroad rates	Increase over regular rates
Denver & Rio Grande Western RR Co.	\$ 35,000.00	\$ 21,715.09	\$ 13,285.00
Rio Grande Southern Railroad Co.	40,000.00	12,232.00	27,768.00
The Alaska Railroad (Government RR)	61,390.00	36,412.00	24,978.00
Pacific & Atlantic Railway & Navigation Co.	1,723.40	788.00	1,005.40
Hudson & Manhattan Railroad Co.	21,000.00	6,120.00	14,880.00
TOTAL	\$159,183.40	\$ 77,267.00	\$ 81,916.40

Mr. LUDLOW. Tell us what gave rise to special contracts? Why should there be special contracts?

Mr. PURDUM. These special contracts, of which there are five in number, are based on legal authority, and are granted by reason of very extraordinary conditions in the areas in which these railroads operate.

First, the Denver & Rio Grande Western Railroad Co., operating from Thistle to Marysville, Utah, 132.20 miles, seven times a week by passenger trains each way, and as much oftener as any trains may run, including a 30-foot apartment car service, from July 1, 1944 to June 30, 1946. The special rate is authorized because of the additional train facilities afforded by the railroad company to meet the postal requirements. The cost of the mail service by train, is less expensive and more satisfactory than by any other means. This line supplies approximately 20 post offices, and is also a base of supply for several star routes;

Then we have the Rio Grande Southern Railroad Co., which operates from Ridgway via Telluride to Durango, Colo., 169.89 miles, seven times a week each way, and as much oftener as trains may run, and one additional trip seven times a week from Dolores to Durango, 60.26 miles, from July 1, 1944 to June 30, 1945. The special rate is authorized because of the high cost of railroad operation on this line which serves a large part of the southwestern portion of the State of Colorado. The railroad traverses a very mountainous district in which there are unusually heavy grades and, in winter, heavy snows.

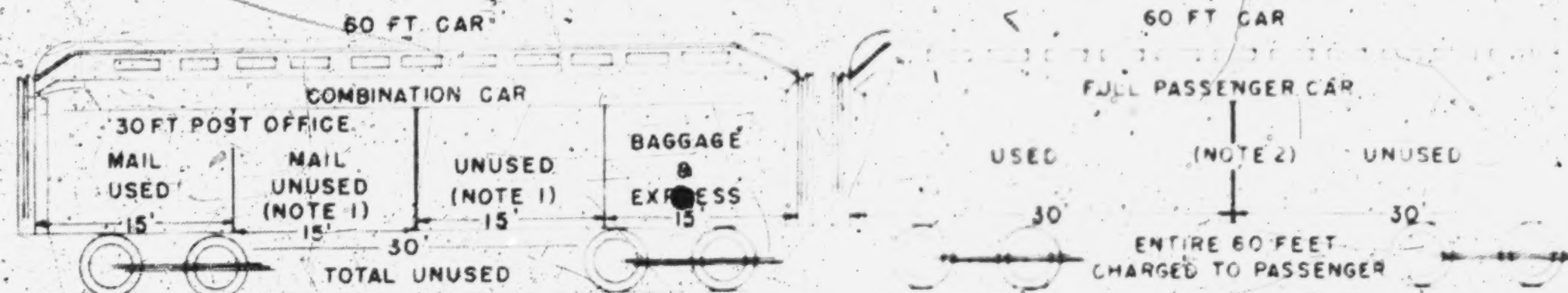
Then we have The Alaska Railroad, running from Seward and Whittier to Fairbanks, Alaska, with branches 505 miles, twice a week each way, and as much oftener as trains may run, from July 1, 1944 to June 30, 1946. The special rate is authorized because of the high cost of labor and materials in Alaska in connection with operation through a mountainous district where there is heavy snowfall and unusually low temperature in winter, and general operating expenses on that account are heavy.

Then we have the Pacific & Arctic Railway & Navigation Co., which operates from Skagway to White Pass, Alaska, a distance of 20.40 miles, six times a week each way from June 11 to September 30, and twice a week each way from October 1 to June 20; and as much oftener as trains may run, from July 1, 1944 to June 30, 1946.

243 The special rate is authorized because the service is performed on a road having a grade of approximately 4 percent through a mountainous district where

DEMONSTRATION OF THE "30 FOOT APARTMENT" FALLACY
(CONTENTION ON THIS POINT WAS NOT EVEN RAISED IN THE ORIGINAL PROCEEDING BEFORE THE INTERSTATE COMMERCE COMMISSION)

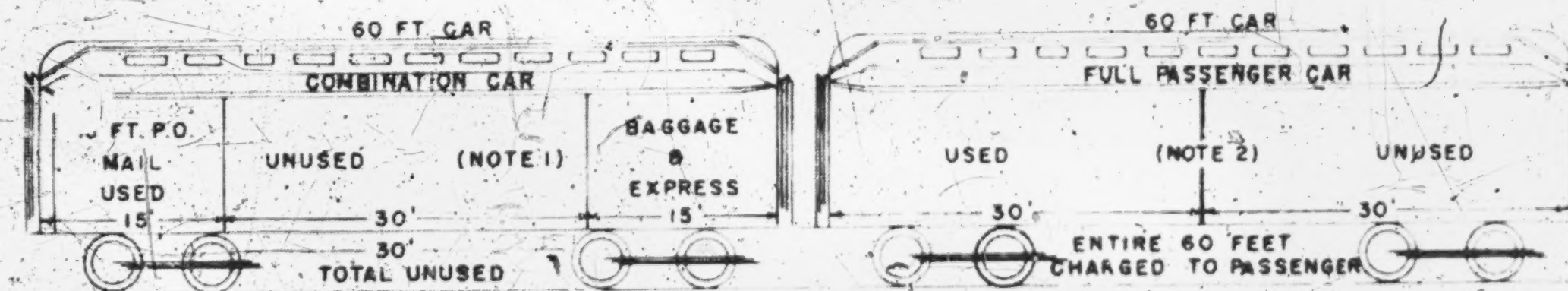
WHEN A 30 FOOT POST OFFICE IS FURNISHED ON A 15 FOOT AUTHORIZATION



MATHEMATICALLY DEMONSTRATED

COMBINATION CAR - 60 FT	FT	PERCENT
MAIL USED	15	25
MAIL UNUSED	15	25
BAG & EXP USED	15	25
BAG & EXP UNUSED	15	25
PASSENGER CAR - 60 FT		
PASSENGER USED	60	100
TOTAL	120	100.00

WHEN A 15 FOOT POST OFFICE IS FURNISHED ON A 15 FOOT AUTHORIZATION



COMBINATION CAR - 60 FT		
BAG & EXP USED	15	25
MAIL USED	15	25
30 FT UNUSED		
MAIL PROPORTION	15	25
BAG & EXP PROPORTION	15	25
PASSENGER CAR - 60 FT		
PASSENGER USED	60	100
TOTAL	120	100.00

(NOTE 1) NO OTHER UNUSED SPACE IS CHARGED TO MAILED.

(NOTE 2) ALL SPACE IN FULL PASSENGER CARS IS CHARGED AGAINST PASSENGER SERVICE, EVEN IF ONLY PARTLY LOADED.

(ON NO DAY DURING THE 28 DAY TEST PERIOD SEPT. 28 TO OCT. 25 - 1931 WAS THERE INSUFFICIENT SPACE IN THE COMBINATION CAR FOR BAGGAGE AND EXPRESS)

THE AMOUNT OF UNUSED SPACE IS THE SAME REGARDLESS OF THE POSITION OF THE PARTITION

THE PROPORTION OF SPACE CHARGEABLE TO THE MAIL IS THE SAME (25%) REGARDLESS OF THE POSITION OF THE PARTITIONS. FOR, IF THE AMOUNT OF UNUSED SPACE IN A COMBINATION CAR WAS 30 FT. ANYHOW, OBVIOUSLY IT COULD MAKE NO DIFFERENCE IF A CAR WITH A 30 FT. PARTITION WAS SUPPLIED ON AN AUTHORIZATION FOR ONLY 15 FT. SINCE THE TOTAL EXCESS SPACE IS JUST THE SAME.

THE MAIL'S PROPORTION OF TOTAL TRAIN SPACE IN EACH EXAMPLE IS EXACTLY THE SAME

difficulties are encountered on account of snow blockades in winter, and in summer by high water. These conditions affecting the service result in expensive operation.

Then, lastly we have the Hudson and Manhattan Railroad Co. This short line operates from the Hudson Terminal Station, New York, to Journal Square, Jersey City, N. J., 3.21 miles, as often as required (there are approximately 25 round trips daily except Sunday performed) from July 1, 1944 to June 30, 1945. The special rate is authorized on account of the particular conditions which cause a high cost of performance of the service. The railroad extends from Hudson Terminal Station in New York City through the Hudson Tunnels to Journal Square in Jersey City. It connects at the latter point with the Pennsylvania Railroad Co., which completes the through line for mail and passengers direct from lower Manhattan to Newark where connection is made with the trains for the

South and West. This road is used to carry a very heavy letter mail on frequent trips and advances materially the very important mails for the lower portion of New York City. The company is required to maintain a force of employees at the terminal station for the sole purpose of handling the mails in addition to the high cost of transportation through its specially constructed roadway under the Hudson River.

Mr. PURDUM. Yes, sir. Special contracts have been in existence for quite a period of time, and they appear to be fully justified.

244

FROM

POST OFFICE DEPARTMENT APPROPRIATION BILL FOR 1947.
Hearings before the Subcommittee of the Committee
on Appropriations House of Representatives,
79th Congress, Second Session of the.

POST OFFICE DEPARTMENT APPROPRIATION BILL FOR 1947.
(December 5, 1945)

Page 249. *Contracts With the Railroads for the
Transportation of Mail*

Mr. LUDLOW. How many contracts do you have with the railroads for the transportation of mail?

Mr. STEPHENSON. There are 255 railroad companies. We had 268 routes operated by the 255 railroad companies.

Page 250.

Mr. LUDLOW. Has the number increased or decreased?

Mr. STEPHENSON. The number of railroads did not change in 1945.

Mr. LUDLOW. Quite a number of trains have been discontinued in recent years. Has the discontinuance of trains ceased now?

Mr. STEPHENSON. Some of the trains which were discontinued have been restored.

Emergency Service

Mr. LUDLOW. Is the emergency service paid for on the same basis as the regular service?

Mr. STEPHENSON. Yes, sir; the same rate.

Mr. LUDLOW. Do you experience any difficulty in securing emergency service or not?

Mr. STEPHENSON. No, there is no difficulty at all. The railroads are very cooperative in furnishing equipment. It is true that they cannot furnish the type of equipment that we use ordinarily because the armed forces required a great deal of the passenger and baggage equipment, and we must necessarily depend on getting by with the use of freight cars, refrigerator cars, and automobile cars, and everything like that to perform the service.

Mr. LUDLOW. Is there much loss through your inability to utilize the space on returned trips?

Mr. STEPHENSON. No, sir; there is not. By the use of freight equipment we relieve ourselves of considerable of the return movement, because we do not pay for the return movement of freight cars, only when they are operated in passenger trains like passenger cars would be operated under normal conditions.

245 Mr. LUDLOW. I was thinking that the space in those returning cars might be utilized by other services in the transportation of household goods, and so forth.

Mr. STEPHENSON. What do you mean by other services; do you mean other departments?

Mr. LUDLOW. Yes; is that done?

Mr. STEPHENSON. No; that is not done at all.

Mr. LUDLOW. The Government pays large sum of money, in the aggregate, for transporting household goods of certain public servants from one place to another. Why could not that space be utilized?

Mr. STEPHENSON. I think the utilization of that space, Mr. Ludlow, by other than the Post Office Department might seriously handicap us in needed transportation of the mail.

Mr. LUDLOW. I do not know. I was just exposing a little economy idea of mine.

Expenditures, Four Months, 1946

What is the first 4 months' expenditure on this item?

Mr. STEPHENSON. The 4 months' expenditure for railroad transportation and mail messenger service was \$47,668,194.

Mr. LUDLOW. What is the Christmas hump in this expenditure, would you say?

Mr. STEPHENSON. I do not understand just what you mean by that.

Mr. LUDLOW. Well, Christmas always brings about a large additional expenditure. I wonder what that would amount to on this particular item?

Page 251.

Mr. STEPHENSON. For all services for last year, 1945, the expenditures for December were \$15,609,000, which is about practically \$4,000,000 more than the months of November and January.

Mr. TABER. Your total expenditure in December of last year was what?

Mr. STEPHENSON. \$15,609,000.

Mr. LUDLOW. That would make a hump there of something like \$4,000,000?

Mr. STEPHENSON. Yes, sir, something like \$4,000,000.

Special Railroad Contracts

Mr. LUDLOW. Now, I wish you would tell us what the special railroad contracts are and put a list of them in the record, and why you have special contracts.

Mr. STEPHENSON. We have five special railroad contracts, the Denver & Rio Grande Railroad Co., between Thistle and Marysville, Utah; the Rio Grande Southern between 246 Ridgway and Durango, Colo.; the Alaska Railroad, a Government railroad, operating between Seward and Whittier to Fairbanks, Alaska; the Pacific & Arctic Railway and Navigation between Skagway and White Pass, Alaska, and the Hudson & Manhattan Railroad Co., operating from Hudson Terminal Station, New York to Journal Square, Jersey City, N. J.

Mr. LUDLOW. I can see probably some reason for segregation in Alaska, but I wonder what the necessity of having these special contracts is in the United States proper.

Mr. STEPHENSON. It is due principally to the high cost of railroad operation, making the rates which are fixed by the Interstate Commerce Commission not compensatory.

Mr. LUDLOW. So that you could not get adequate service unless you had special contracts, is that it?

Mr. STEPHENSON. Well, we could compel the railroad companies to perform the service.

Mr. LUDLOW. But it would not be compensatory?

Mr. STEPHENSON. No, sir; it would not be. There are only five instances where we have special contracts. We keep away from the special contracts all we can. (Under-scoring supplied.)

Mr. LUDLOW. Are those of long standing?

Mr. STEPHENSON. Yes, they have been in effect a good many years.

Mr. LUDLOW. Is it expected that they will be permanent?

Mr. STEPHENSON. We rather expect this year that one of these routes will be terminated.

Mr. LUDLOW. Which one?

Mr. STEPHENSON. The Rio Grande Southern.

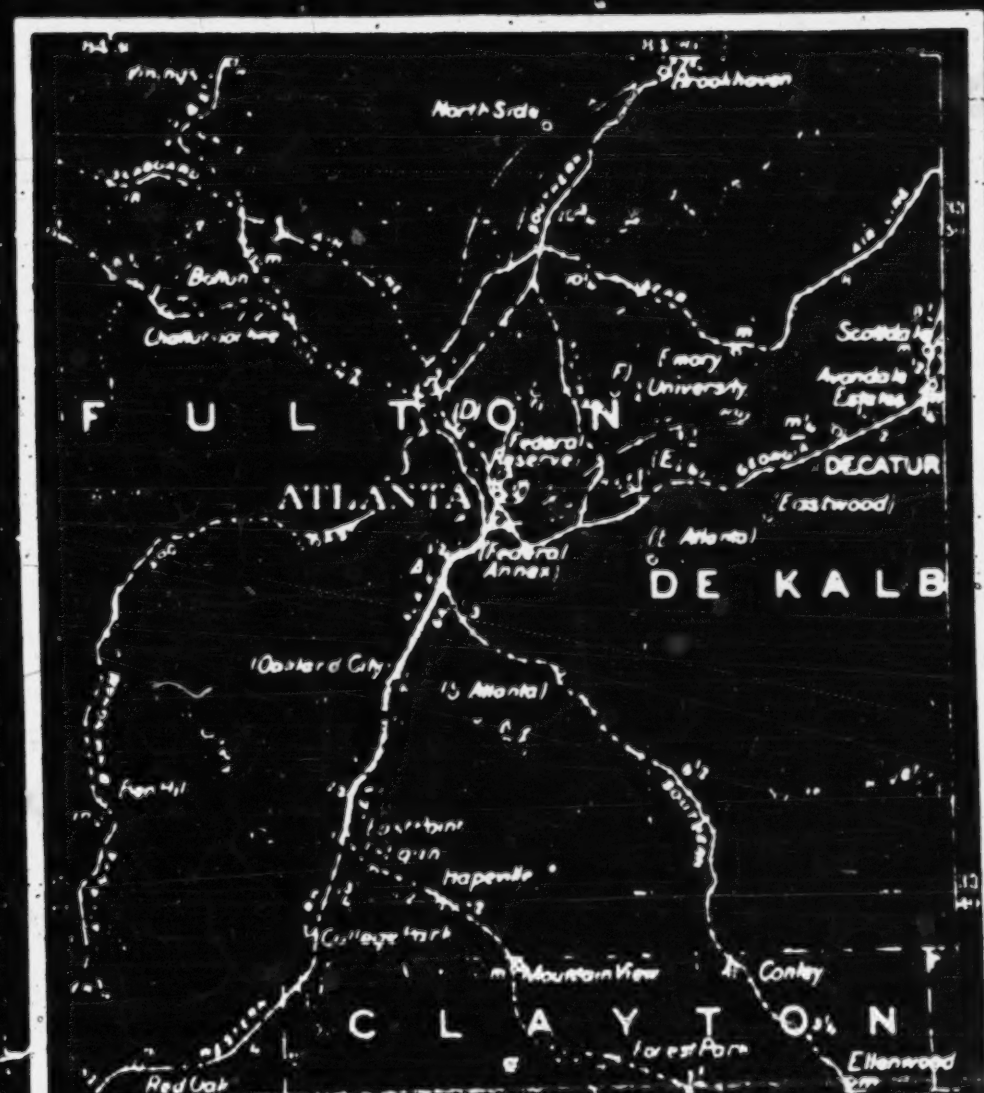
(Note: this exhibit connects up with the testimony of Defendant's witness Handy on pages 221/224 and 379/381.)



SHOWING POST OFFICES
WITH INTERMEDIATE DISTANCES ON MAIL ROUTES

EXPLANATION				
Post Office		See a copy of		
Post Office Station	Name	Post Delivery Supply		
Post Office County Seat		State contract for		
Summer Post Office		Beginning & End of Month	Month	Year
Discontinued Post Office		See times a week		
Postion Post		Times a week		
Mailroad following station *	*****	Times a week		
Railway telegraph *		Times a week		
* Mail times are shown		At Mail Route *	Administrative	
Mail Messenger	=	Mail delivery		
		Mail times are indicated		

* Advances on all mail routes are given to the nearest quarter mile



ATLANTA AND VICINITY

COPY

RPO ROUTES CONNECTING WITH MAIL SERVICE
ON GA. & FLA. R.R.

<i>Point on Georgia & Florida R.R.</i>	<i>Connecting RPO Route</i>	<i>Railroad</i>	<i>Route Mileage</i>
Augusta, Georgia	Augusta & Atlanta RPO	Ga. R.R.	171.17
	Charlotte & Augusta RPO	So. Ry.	191.47
	Branchville & Augusta RPO	So. Ry.	75.56
	Wilmington & Augusta RPO	ACL R.R.	277.24
	Augusta & Point Royal RPO	C&WC Ry.	113.38
Midville, Georgia	Atlanta & Savannah RPO	Central of Ga. Ry.	293.61
Vidalia, Georgia	Savannah & Montgomery RPO	SAL Ry.	338.12
	Macon & Vidalia RPO	MD&S R.R.	92.90
Hazelhurst, Georgia	Atlanta & Jack. RPO	So. Ry.	330.89
Douglas, Georgia	Atlanta & Waycross RPO (Atlanta to Brunswick, mileage 330.41)	AB&C R.R.	278.57
Willacoochee, Georgia	Waycross & Albany RPO	ACL R.R.	111.73
Valdosta, Georgia	Atlanta, Valdosta & Jack. RPO (GS&F. Ry., mileage 261.82)	GS&F Ry.	349.64
	Waycross & Montgomery RPO	ACL R.R.	314.65
	Valdosta & Palatka RPO	GS&F Ry.	134.01
Madison, Florida	Jack. & Pensacola RPO	SAL Ry.	

(Jack. to River Junction, mileage 208.25)

(L&N R.R. River Junction to Pensacola 160.67)

Date of order. AUG 21 1928

Transportation pay.
per annum:

New. \$ 40,709.04

DEM

ORDER

DAVID L. S.

Train No.	POINTS BETWEEN WHICH SERVICE IS AUTHORIZED		CLASS OF SERVICE AUTHORIZED					One-way trips per annum	Miles of service per annum	Rate per mile	Rate per mile, load gross	Annual rate
			Track distance	Full R. P. O. cars	Apartment cars	Storage	Closed coach					
			Miles	Feet	Feet	Feet	Feet					
2	Tennille	Augusta, Ga.	83.30		15		313	26072.90	14.5			3780.57
2	Tennille	Keysville, Ga.	56.90				52	2958.80	4.5			133.14
3	Augusta	Tennille, Ga.	83.30		15		313	26072.90	14.5			3780.57
4	Valdosta	Augusta, Ga.	222.90		15		365	81358.50	14.5			11796.98
4	Madison, Fla.	Valdosta, Ga.	27.39				313	8573.07	4.5			385.78
5	Augusta	Valdosta, Ga.	222.90		15		365	81358.50	14.5			11796.98
5	Valdosta, Ga.	Madison, Fla.	27.39				313	8573.07	4.5			385.78
G-7	Millen	Vidalia, Ga.	52.94		15		52	2752.88	14.5			399.16
7	Millen	Pendleton(no), Ga.	44.10				52	2293.20	4.5			103.19
G-	Vidalia	Millen, Ga.	52.94		15		52	2752.88	14.5			399.16
8	Oak Park	Millen, Ga.	40.10				52	2085.20	4.5			93.83
9	Augusta	Haselhurst, Ga.	129.46				313	40520.98	4.5			1823.44
10	Haselhurst	Augusta, Ga.	129.46				313	40520.98	4.5			1823.44
L-14	Vidalia	Millen, Ga.	52.94		15		261	13817.34	14.5			2003.51
L-15	Millen	Vidalia, Ga.	52.94		15		261	13817.34	14.5			2003.51
								353528.54				40709.04

Approved:

Authorized:

Gen'l Supl. R. M. S.

Acting

Dept. E. M. S. _____ 159

Rept. Div. Fisheries Act

Notified Co

250

Defendant's Exhibit No. 7

Copy

Form 5196

SUBJECT:

In Reply Mention
Initials, Subject, and DateRAILWAY MAIL SERVICE
OFFICE OF CHIEF CLERK, DISTRICT

Atlanta, Ga., October 10th, 1938

Mr. I. R. White, Supt. Trans.
Georgia & Florida Railroad Co.
Augusta, Georgia

Dear Sir:

Investigation is being made as to the comparative costs of rail service compared to motor car or star route service on the Augusta & Madison R. P. O. between Augusta and Valdosta.

Please advise if the loss of mail pay would seriously affect the finances of the railroad if this service were eliminated, and if train service would likely be curtailed or eliminated on the line, and if the train service were eliminated or curtailed, would the communities involved be discommoded or affected adversely, by the loss of railroad service.

Respectfully,

.....
Chief Clerk, District 8

JHB:a

251

Defendant's Exhibit No. 8

Copy

GEORGIA & FLORIDA RAILROAD
W. V. GRIFFIN AND H. W. PURVIS, RECEIVERSI. R. WHITE,
SUPERINTENDENT TRANSPORTATION

FILED AUGUSTA, GA. October 25, 1938. W:H.

MAR 20 1946

COURT OF CLAIMS

Mr. J. H. Bibb,
Chief Clerk, District 8,
Railway Mail Service,
Atlanta, Ga.

Dear Sir:

This will acknowledge your letter October 10th advising that investigation was being made to determine compara-

tive costs of rail service between star route service on the highways and our train service.

The loss of revenue for handling the mails would seriously affect the finances of the railroad and would undoubtedly curtail train service or eliminate passenger train service entirely; in fact I am not sure but that the loss of the mail revenue would result in abandonment of the railroad.

At the present time, we operate passenger or mixed train service in both directions over the territories named, and the trains which handle the mails are the only trains operated giving passenger, express and mail service to the communities. The withdrawal of the trains would seriously affect the communities and the abandonment of the railroad would be disastrous to many of the communities.

The Georgia & Florida Railroad began operation in the year 1906 and has contributed a great deal to the development and growth of the section of Georgia and Florida through which it operates. The railroad is comparatively young and while the development has been constant, the railroad has had a difficult time financially due to development of competitive forms of transportation. The worth and value of the railroad to the communities and to the territory it serves is unquestioned.

During the first nine months of the current year, revenues amounted to \$839,230.00. Operating expenses amounted to \$785,223.00, leaving a net revenue from operations of \$54,007.00. Railroad tax accruals under the tax laws of the states, Social Security Acts and federal railroad taxing act amount to \$68,594.00. Equipment rents and joint facility rents amounted to \$16,823.00. Non-operating income amounted to \$13,459.00; deductions from income \$8,580 which created a deficit of \$26,539.00. This leaves no funds for the payment of Receivers' interest on equipment trust certificates or miscellaneous items.

252 We feel that when improvement in general business arrives, our situation will improve also and we need your assistance and the revenues for handling the mail to keep the property operating. The railroad employs approximately 700 persons at fair wages, the majority of whom would be unable to find gainful employment if the railroad should cease operating, and every dollar of revenue taken from us will, no doubt, hasten the day when it will be necessary for us to discontinue operating.

It is our desire to handle United States mails in the best manner possible under the existing conditions, and we are hopeful that we shall not be deprived of the mail revenue.

Yours very truly,

S. I. R. WHITE
Supt. Transportation

Space Changes—Route 104781

Form 5196

Subject:

In Reply Mention

Initials, Subject, and Date

RAILWAY MAIL SERVICE

OFFICE OF CHIEF CLERK, DISTRICT

Atlanta, Ga., June 21, 1939

The General Superintendent,
Railway Mail Service,
Washington, D. C.

(1) Transmitting herewith recommendation to curtail 15 ft. apartment car service in Augusta & Madison RPO trains 4 and 5, between Douglas and Valdosta, Ga. to be superseded by 3 ft. CP service, daily except Sunday, a distance of 62.70 miles, the service, Douglas to Augusta, Ga. and return to remain the same as at present, a distance of 160.20 miles.

(2) This recommendation is in accordance with Joint Letter of September 8, 1937, in regard to minimum pay routes and mixed train service.

(3) The Augusta & Madison RPO is on the main line of the Georgia & Florida Railroad, consisting of Route 104781, Valdosta to Augusta, Ga. and return. Total mileage 222.90 miles. The Space earnings of the 15 ft. RPO unit used on this line between Valdosta and Augusta, Ga. and return is \$23593.96 per annum, for seven round trips per week. The apartment car accommodates all the mails handled on each trip.

(4) An inspection was made in train 4, May 18th, and train 5, May 19th, copy of inspection report for both trains attached hereto. In train 4 leaving Valdosta there was only one pouch received, no storage mail or sacks for distribution. There was only 10 pouches opened between Valdosta and Hazlehurst, there being 25 letter packages and one sack of papers for distribution, the major portion of which was received between Douglas and Hazlehurst, Ga. In train 5 from Hazlehurst to Valdosta there were only 9 pouches received and distribution was made of 25 letter packages and one sack, the major portion of which was received and handled between Hazlehurst and Douglas, Ga.

(5) Consideration was given the matter of establishing a Star Route to supersede the RPO service between Douglas and Valdosta, Ga. but as there is no passable road to cover all offices involved, it was not considered feasible to have a Star Route between these points.

(6) The RPO service between Valdosta and Douglas, Ga. is not needed or justified as Star Route 2151 from Val-

Valdosta to Adel, Ga. and return, affords an adequate supply for Barretts, Nashville and Ray City. Willacoochee, Ga. the only other office between Valdosta and Douglas, Ga. is served by four RPO trains on the Waycross & Albany RPO—

Train 17—daily except Sunday; Train 18, daily

94—

95

(7) The present service over the Augusta & Madison RPO costs as follows per annum:

Train 4, Valdosta to Augusta, 15 ft. Apt "A" \$1,796.98

Train 5, Augusta to Valdosta, Ga. 15 ft. Apt "A" 11,796.98

TOTAL COST OF PRESENT SERVICE.....\$23,593.96

254 (8) The proposed service over the Augusta Madison, RPO, Douglas to Augusta, Ga. and return, will cost as follows:

Train 4, Valdosta to Douglas, 3 ft. CP unit "B" 883.12

Train 4, Douglas to Augusta, Ga. 15 ft. Apt "A" 8,478.58

Train 5, Augusta to Douglas, 15 ft. Apt "A" 8,478.58

Train 5, Douglas to Valdosta, 3 ft. CP "B" 883.12

TOTAL COST OF SERVICE PROPOSED.....\$18,723.40

TOTAL COST OF PRESENT SERVICE.....23,593.96

TOTAL NET SAVINGS ON SPACE.....\$ 4,870.56 per annum

(9) Total net savings of \$4870.56 per annum, effected by rearrangement of space. In addition, a savings of one grade-5 clerk, \$2450, with annual leave, \$90.69 and travel allowance, \$273.75—making a total net saving of \$7685.00 per annum.

(10) It is not believed that the loss of revenue from the RPO car superseded by CP service from Douglas to Valdosta, would affect the finances of the Georgia & Florida Railroad or the operations of trains 4 and 5. This is a mixed train operated from Valdosta to Augusta and return with very little, if any, passenger travel, running very irregularly, making regular schedule approximately three times per month. We are submitting protest of the Railroad Company and petitions of protest of others, which are understood to have been instigated by the Railroad Officials. Last fall consideration was given to discontinuance of all RPO service to be superseded by Star Routes, which was the cause of the attached petition, therefore, should not be considered as against the proposed service, as the Postmasters of all offices involved are not opposed to CP service between Valdosta and Douglas.

(11) The recommendation to supersede RPO service by CP service between Douglas and Valdosta, is based upon the fact that the Railroad has shops at Douglas, Ga. and

maintain facilities for heating and cleaning of mail cars, also switch engine, 24 hours per day; however, the cars at present operated by the Railroad Company are heated by coal stove. Douglas, Ga. is also a junction of the A. B. & C. Railway. We do not have any information whether or not crews change at Douglas, but the schedule would indicate that they do, therefore, in view of these facts, we believe that Douglas is a division point where an RPO authorization can be terminated. Official Time Table of the Railroad Company shows a division at Douglas, Ga. and each freight train remains at Douglas as follows:—

	TRAIN 51	TRAIN 57	TRAIN 52	TRAIN 58
Ar. Douglas	8.45 PM	8.45 AM	9.00 AM	10.40 PM
Lv. Douglas	10.40 PM	11.45 AM	9.20 AM	10.50 PM

255 (12) It is not considered advisable to cover the whole line by Star Route Service on account of vigorous complaints and our investigation developed that it is not practicable to cover the service by Star Route, as the roads are not passable the year round, besides, do not cover the offices involved. There is a sufficient quantity of mail handled over the line to remain that will justify RPO service.

(13) Sunday service by CP trains 4 and 5 between Valdosta and Douglas, Ga. is not needed or desired, as the day's mail has already been received and Post Office closed before arrival of either train. The Postmasters at all offices are agreeable to the proposition. A small amount of work will be required in the Valdosta Post Office in making up pouches to be dispatched on Augusta & Madison CP train 4, which will be very little, however, as practically all of the mail for these offices is dispatched in the A.M., over Star Route 21271. No extra work will be required by the Post Office at Douglas, Ga. The following offices are involved:—

Office	Class	Salary or Con- vocations	Present Service	Proposed Service
Willacoochee, Ga.	3rd	\$1600	Exchange as follows:	Same as at present
PM agreeable			Ar. & Man 4 "A" 11.50am	except trains 4
Two Rural Routes			" " " 5 "A" 2.18pm	and 5 will be by
195 boxes			Waycross & Albany	CP service, daily
			Tr. 17 "B" 5.39 PM	except Sunday
			18 "A" 11.18 AM	
			24 "B" 11.38 PM	
			25 "A" 3.33 PM	
Nashville, Ga.	3rd	\$2300	Star Route 21271	do
PM agreeable			Ar. 6.20 AM outward	
Four Rural Routes			Ar. 5.40 PM inward	
745 boxes			Augusta & Madison	
			Tr. 4 "A" 11.16 AM	
			Tr. 5 "A" 2.52 PM	

Office	Class	Salary or Compensation	Present Service	Proposed Service
Ray City, Ga.	3rd	\$1500	STAR ROUTE 21271	do
PM agreeable			Ar 8:00 AM—outward	
Rural Route			Ar 5:45 PM—Inward	
289 boxes			AUGUSTA & MADISON	
			Tr 4 "A" 10:56 AM	
			Tr 5 "B" 3:11 PM	
Barretts, Ga.	4th	Not available	AUGUSTA & MADISON	do
PM agreeable	able		Tr 4 "B" 10:46 AM	
			Tr 5 "B" 3:21 PM	
			STAR ROUTE 21271	
			Ar 7:45 PM—outward	
			Ar 6:00 PM—Inward	

256 (14) The following pouches will be handled in Augusta & Madison CP Trs 4 and 5

Made by	Labelled to	Freq	Dispatched via
Valdosta, Ga.	Willacoochee, Ga.	B	Augusta & Madison CP 4
do	Nashville, Ga.	B	do
do	Ray City, Ga.	B	do
do	Barretts, Ga.	B	do
do	Aug & Mad RPO Tr 4	B	do
Willacoochee	do	B	do
Nashville	do	B	do
Ray City	do	B	do
Barretts	do	B	do
Aug & Mad RPO Tr 5	Barretts	B	Augusta & Madison CP 5
do	Ray City	B	do
do	Nashville	B	do
do	Willacoochee	B	do
do	Valdosta	B	do
do	Cin & Jack SD 1	B	do
do	Wacy & Montg RPO 180	B	do
Barretts	Valdosta, Ga.	B	do
Ray City	do	B	do
Nashville	do	B	do
Willacoochee	do	B	do

Any other pouches found to be necessary will be authorized and some of those enumerated may be found to be unnecessary and will be discontinued.

(15) It is recommended that the 15 ft. apartment car in Augusta & Madison RPO trains 4 and 5 be discontinued between Valdosta and Douglas, Ga., daily, and be superseded by 3 ft. CP service, daily except Sunday.

J. H. Bunn
Chief Clerk, District 8

JHB:L
Approved: Jun 21 1939

C. D. ADAMS
Acting Superintendent

Form 1000
Revised July 1933

CLERICAL CHANGES—RAILWAY MAIL SERVICE 4th DIVISION

Changes in Augusta, Ga. & Madison, Ga. RPO

Effective

GENERAL SUPERINTENDENT, R. M. S., Washington, D. C.

The present and proposed status of above organization is as follows:

CLERICAL GRADES ALLOWED	OFFICIALS					CLERKS			STENO- GRAPHERS			LA- BORERS	TOTAL	ACTING CLERKS		
	12	11	10	9	8	CLASS B	CLASS A	Travel and allowance	4	3	2			Number of days Relief	Ad- ditional	Show date of last ap- proval for "Present" and date to which needed for "Proposed"
Present...							4						4	-	-	-
Proposed							3						3	-	-	-

Cost of service

Increase

Decrease

1. Clerks Gr. 5 and Clerks, Gr. 8		\$ 2450.00
Acting clerks Days		
Annual leaves		90.69
Travel allowance (explain increase)		273.75
Acting clerks' travel and DH expense		
Total	\$	\$ 2814.44
If examiner or assistant dictate by adding Ex.	Net	\$

STATE APPORTIONMENT

State	Miles	Percent	Authorized	On line
Ga.	160.20	100	3	3

(1) RECOMMENDATIONS:

CHANGES PROPOSED

Trains	Class	Crew Assignment	Outline of Changes	Hours of Duty Round Trips Per Annum			
				Present	Proposed	Present	Proposed
4, 5	A	Clerk in Charge	Curtailment of RPO Ser- vice, Douglas, Ga., superseded by CP service, Douglas to Valdosta, Ga., and return, daily except Sunday	5.28	5.24	91.25	121.66

(2) In accordance with your Joint Letter of September 8, 1937, in regard to minimum pay routes and mixed train service, recommendation on the Augusta & Madison RPO line is herewith submitted.

Form 5090

258 (6) The RPO service between Valdosta and Douglas, Ga. is not needed or justified as S. R. 21271 from Valdosta to Adel, Ga. and return, affords an adequate supply for Barretts, Nashville and Ray City. Willacoochee, Ga., the only other office between Valdosta and Douglas, Ga. is served by four RPO trains on the Waycross & Albany RPO —

Train 17, daily except Sunday; Train 18, daily

“ 94 “ “ “ “ “ 95 “

(7) The present service over the Augusta & Madison RPO costs as follows, per annum:—

Train 4, Valdosta to Augusta, 15 ft. Apt “A”..... 11,796.98

Train 5, Augusta to Valdosta, Ga. 15 ft. Apt “A”... 11,796.98

TOTAL COST OF RPO SERVICE.....\$23,593.96

(8) The proposed service over the Augusta & Madison RPO, Douglas to Augusta, Ga. and return, will cost as follows:—

Train 4, Valdosta to Douglas, 3 ft. CP unit “B”..... 883.12

Train 4, Douglas to Augusta, Ga. 15 ft. Apt “A” 8,478.58

Train 5, Augusta to Douglas, 15 ft. Apt “A”..... 8,478.58

Train 5, Douglas to Valdosta, 3 ft. CP “B”..... 883.12

TOTAL COST OF SERVICE PROPOSED.....\$18,723.40

TOTAL COST OF PRESENT SERVICE..... 23,593.96

TOTAL NET SAVINGS ON SPACE.....\$ 4,870.56 per annum

(9) Total net savings of \$4870.56 per annum effected by rearrangement of space. In addition, a savings of one grade 5 clerk, \$2450.00, with annual leave of \$90.69 and travel allowance, \$273.75 — making a total net saving of \$7685.00 per annum.

(10) Schedule maintained during the months of October, 1938 and April, '39.

Train 4—due 6.40 p.m.—Train 5 due 3.50 p.m.

OCTOBER 1938

APRIL 1939

Train 4	Train 5
1—6.55 p.m.	4.15 p.m.
2—7.00 p.m.	4.25 p.m.
3—6.40 p.m.	4.00 p.m.
4—8.30 p.m.	4.00 p.m.
5—9.00 p.m.	3.55 p.m.
6—8.50 p.m.	4.55 p.m.
7—8.05 p.m.	4.25 p.m.
8—7.25 p.m.	4.20 p.m.
9—6.55 p.m.	5.35 p.m.
10—6.40 p.m.	4.15 p.m.

Train 4	Train 5
1—7.55 p.m.	5.00 p.m.
2—7.00 p.m.	4.25 p.m.
3—6.50 p.m.	4.50 p.m.
4—6.55 p.m.	4.45 p.m.
5—7.30 p.m.	4.05 p.m.
6—7.55 p.m.	4.50 p.m.
7—7.30 p.m.	4.20 p.m.
8—7.55 p.m.	5.25 p.m.
9—6.40 p.m.	4.25 p.m.
10—6.40 p.m.	3.55 p.m.

Train 4 due 6.40 p.m. — Train 5 due 3.50 p.m.

OCTOBER 1938

Train 4	Train 5
11—8.20 p.m.	4.55 p.m.
12—8.10 p.m.	3.50 p.m.
13—7.45 p.m.	5.05 p.m.
14—8.40 p.m.	4.30 p.m.
15—7.35 p.m.	4.50 p.m.
16—7.50 p.m.	4.30 p.m.
17—7.20 p.m.	3.50 p.m.
18—8.05 p.m.	5.05 p.m.
19—8.25 p.m.	4.20 p.m.
20—8.30 p.m.	4.15 p.m.
21—7.45 p.m.	4.20 p.m.
22—7.40 p.m.	4.50 p.m.
23—7.55 p.m.	5.38 p.m.
24—7.40 p.m.	5.05 p.m.
25—8.15 p.m.	4.40 p.m.
26—8.00 p.m.	4.30 p.m.
27—8.20 p.m.	4.50 p.m.
28—7.55 p.m.	4.25 p.m.
29—7.50 p.m.	4.15 p.m.
30—8.10 p.m.	6.10 p.m.
31—7.10 p.m.	4.17 p.m.

APRIL 1939

Train 4	Train 5
7.10 p.m.	3.50 p.m.
7.05 p.m.	4.15 p.m.
6.45 p.m.	3.50 p.m.
7.45 p.m.	4.20 p.m.
6.55 p.m.	4.20 p.m.
6.40 p.m.	4.35 p.m.
6.40 p.m.	3.55 p.m.
6.40 p.m.	3.50 p.m.
6.40 p.m.	4.50 p.m.
7.20 p.m.	4.05 p.m.
6.55 p.m.	5.00 p.m.
7.20 p.m.	4.45 p.m.
6.50 p.m.	4.35 p.m.
6.40 p.m.	3.50 p.m.
7.00 p.m.	4.15 p.m.
6.50 p.m.	4.15 p.m.
7.00 p.m.	3.50 p.m.
7.30 p.m.	4.35 p.m.
7.20 p.m.	4.25 p.m.
6.40 p.m.	4.30 p.m.

(11) It is not believed that the loss of revenue from the RPO car superseded by CP service from Douglas to Valdosta would affect the finances of the Georgia & Florida Railroad or the operations of trains 4 and 5. This is a mixed train operated from Valdosta to Augusta and return with very little, if any, passenger travel, running very irregularly, *making regular schedule approximately three times per month*. We are submitting protest of the Railroad Company and petitions of protest of others, which are understood to have been instigated by the Railroad Officials. Last fall consideration was given to discontinuance of all RPO service to be superseded by Star Routes, which was the cause of the attached petition, therefore, should not be considered as against the proposed service as the Postmasters of all offices involved are not opposed by CP service between Valdosta and Douglas.

(12) The recommendation to supersede RPO service by CP service between Douglas and Valdosta, is based upon the fact that the Railroad has shops at Douglas, Ga. and maintains facilities for heating and cleaning of mail cars, also switch engine, 24 hours per day, however, the cars at present operated by the Railroad Company are heated by coal stove. Douglas, Ga. is also a junction of the A. B. & C.

Railway. We do not have any information whether or not crews change at Douglas, but the schedule would indicate that they do, therefore, in view of these facts, we believe that Douglas is a division point where an RPO authorization can be terminated. Official Time Table of the Railroad Company shows a division at Douglas, Ga. and each freight train remains at Douglas as follows:—

260

	TRAIN 51	TRAIN 57	TRAIN 53	TRAIN 58
Ar. Douglas	8.45 P.M.	8.45 A.M.	9.00 A.M.	10.40 P.M.
Lv. Douglas	10.40 P.M.	11.45 A.M.	9.20 A.M.	10.50 P.M.

(13) It is not considered advisable to cover the whole line by Star Route Service on account of *vigorous complaints* and our investigation developed that it is not practicable to cover the service by Star Routes as the roads are not passable the year round, besides do not cover the offices involved. There is a sufficiently quantity of mail handled over the line to remain that will justify RPO service.

(14) Sunday service by CP trains 4 and 5 between Valdosta and Douglas, Ga. is not needed or desired, as the day's mail has already been received and Post Office closed before arrival of either train. The Postmasters at all offices are agreeable to the proposition. A small amount of work will be required in the Valdosta Post Office in making up pouches to be dispatched on Augusta & Madison CP train 4, which will be very little, however, as practically all of the mail for these offices is dispatched in the A. M., over Star Route 21271. No extra work will be required by the Post Office at Douglas, Ga. The following offices are involved:—

Office	Class	Salary or Compensation	Present Service	Proposed Service
Willacoochee, Ga. PM agreeable Two Rural Routes 195 boxes	3rd	\$1600.	Exchange as follows: Aug & Mad 4 "A" 11.50 AM " " " 5 "A" 2.18 PM WAYCROSS & ALBANY Tr 17 "B" 5.39 PM 18 "A" 11.18 AM 94 "B" 11.38 PM 95 "A" 3.33 PM	Same as at present except train 4 & 5 will be by CP service, Daily ex. Sun.
Nashville, Ga. PM agreeable Four Rural Routes 745 boxes	3rd	\$2300	STAR ROUTE 21271 Ar. 6.20 AM onward Ar. 5.30 PM — onward AUGUSTA & MADISON Tr 4 "A" 11.16 AM Tr 5 "A" 2.52 PM	Same as at present except no RPO service "B" at CP service "E" CP service will daily ex. Sun.

Office	Class of Car	Present Service	Proposed Service
Ray City, Ga. P.M. agreeable 1 Rural Route 280 boxes	3rd	\$1500 STAR ROUTE 21271 Ar 8:00 AM — outward Ar 5:45 PM — inward Augusta & Madison Tr 4 "A" 10:56 AM Tr 5 "B" 3:11 PM	Same as at present except no RPO service "B" — or CP service from Trs 4 and 5 "E"
Barretts, Ga. P.M. agreeable	4th	Not avail- able	Same as at present except no RPO service "B" — or CP service from Tr 4 and Tr 5 "E"
		AUGUSTA & MADISON Tr 4 "B" 10:46 AM Tr 5 "B" 3:21 PM STAR ROUTE 21271 Ar 7:45 AM — outward Ar 6:00 PM — inward	

(15) The following pouches will be handled in Augusta & Madison CP Trs 4 and 5

Made by	Labelled to	Freq	Dispatched via
Valdosta, Ga.	Willacoochee, Ga.	B	Augusta & Madison CP 4
do	Nashville, Ga.	B	do
do	Ray City, Ga.	B	do
do	Barretts, Ga.	B	do
do	Aug & Mad RPO Tr 4	B	do
Willacoochee	do	B	do
Nashville	do	B	do
Ray City	do	B	do
Barretts	do	B	do
Aug & Mad RPO Tr 5	Barretts	B	Augusta & Madison CP 5
do	Ray City	B	do
do	Nashville	B	do
do	Willacoochee	B	do
do	Valdosta	B	do
do	Cin & Jack SD 1	B	do
do	Waye & Montg RPO 180	B	do
Barretts	Valdosta, Ga.	B	do
Ray City	do	B	do
Nashville	do	B	do
Willacoochee	do	B	do

Any other pouches found to be necessary will be authorized and some of those enumerated may be found to be unnecessary and will be discontinued.

(16) The Augusta & Madison RPO is at present organized with four grade 5 clerks performing service four days on and four days off. However, under the proposed arrangement, there will be three grade 5 clerks performing service four days on, three days off and four days on, one day off. The discontinuance of RPO service in trains 4 and 5 between Valdosta and Douglas and return will dis-

pense with the needs of one grade 7 clerk on the Augusta & Madison RPO. However, the Junior Clerk has expressed a willingness to come to Atlanta for any assignment or vacancy out of Atlanta or accept a transfer to the Atlanta Terminal RPO.

(17) **CHANGE IN HEADQUARTERS**—Under the proposed arrangement, the headquarters of all clerks will be changed from Valdosta, Ga. to Douglas, Ga., but would be permitted to maintain their residence at Valdosta, Ga. and deadhead to and from Valdosta, on CP trains 4 and 5. The clerks remaining on this line would be R. E. Black, W. H. Moxley, and W. S. Ware. Clerk Black is the only one of these clerks who own his home at Valdosta, therefore, two of the three could move to Douglas, Ga. and eliminate any deadheading.

(18) **SURPLUS CLERKS**

Name	Grade	Residence	Home Ownership	Married	Dependent Children	Available Vacancies
John J. Thurmond	5	Valdosta, Ga.	No	Married	Four	Atlanta Terminal RPO

(19) **RECOMMENDATION**

We have had correspondence with all of the offices, Douglas to Valdosta, Ga. and since there is no objection to the proposed rearrangement of service and there will be a net saving of \$7685 per annum, it is recommended that the RPO service between Valdosta and Douglas and return, be superseded by CP service, daily, except Sunday; RPO Service, Douglas to Augusta, Ga. and return, daily, continue as at present, and one grade 5 clerk discontinued, surplusing Clerk John J. Thurmond, the junior clerk assigned to this line.

REPORT OF R. P. O. INSPECTION

(REQUIRED)
(SPECIAL)Inspection of Augusta & Madison
on Friday May 19,
(Day of week)R. P. O. Train 5
between Augusta and Valdosta

70 (max)

A

936

1. MAIL DISTRIBUTED THIS TRIP

Chief Clerk reported at Car Between (See Note 3)	Miles traveled	Number of mail stops along route	Number of mail pieces		Pouches opened (Note 4)	Letters packed	Packets packed	Registers (pieces)	Number of clerks on duty	Total clerk hours	Average per clerk per hour	Total hours un- employed
			R	D								
Advance (6:40 A.M. to 7:40 A.M.)					3	10	10	0	1	1.00	46	None
Augusta to Hazlehurst	129	5	17	17	21	50	3	7	1	4.56	21	None
Hazlehurst to Valdosta	94	1	8	8	9	25	1	5	1	3.14	15	1 hr.
TOTAL FOR TRIP	223	6	25	25	33	85	14	12	3	9.10	23	1 hr.

2. DISTRIBUTION BY DAYS OF WEEK 4 weeks ending May 31, 1939

(See Note 4)

Day of Week	CLERICAL FORCE (From current Form 3317)					AVERAGE MAIL WORKED						UNWORKED MAIL (Explain under remark)		
	CREW		CLERK'S HOURS (Except unloading)			Pouches opened	Letters packed	Packets packed	Letters for mail	Total pieces packed	Average per clerk per hour (fraction)	Number of letters	Pouches	Packets
	Through clerks	Helpers	Ad value	Ex route	Total									
Sunday	1	0	1.00	8.10	9.10	23	64	16	6	161	18			
Monday	1	0	"	"	"	30	73	12	4	171	19			
Tuesday	1	0	"	"	"	30	80	19	5	199	22			
Wednesday	1	0	"	"	"	31	84	20	10	211	23			
Thursday	1	0	"	"	"	33	87	22	12	225	25			
Friday	1	0	"	"	"	31	87	23	10	223	24			
Saturday	1	0	"	"	"	31	88	21	10	218	24			

NONE

3. SPACE USED IN AUTHORIZED DISTRIBUTING UNIT Frequency A

CAR No. 546

DIST. UNIT

STORAGE

DISTRIBUTION DEPARTMENTS USED AND NEEDED

5. **DISTRIBUTION PERFORMED THIS TRIP.** (If a State is made up No. 1, 2, etc., show each subdivision. If distribution of a State or city or long or short letters requires two or more cases, show each case, also indicate frequency required city distribution. Designate Accommodation distribution by "A." Distribution which can be deferred on basis of space needed, as "D." Explain excessive separations.)

[illegible]

6. Name of clerk in charge W.S.Ware Character of supervision One Man Run
7. Are badges and revolvers worn on duty as required? Yes 8. Are necessary corrected schemes and schedules carried? Yes
9. Commissions, condition of Good 10. Are registers handled according to regulations? Yes
11. Are official diagrams followed? Yes Date of last approved diagram August 10, 1937
12. Are errors checked and irregularities reported? Yes Number errors checked this trip 3
13. Is any change in organization needed? Yes 14. Is any relief in force necessary? Yes
15. Can any economy in organization be effected? Yes The complementary train number is 4
16. Is advance period sufficient or excessive? Sufficient Average unloading credit needed this trip? 5 min.
17. State if working packages and sacks are large, small, or average. Packages small Sacks small
18. Last previous complete inspection April 8, 1937 between Valdosta and Augusta
19. Last previous partial inspection No record between —
20. REMARKS: Conditions regular. No mails unworked or carried by. All available
mails loaded at all points. Sunday service necessary as service between Valdosta and
Douglas will be closed pouch and will be distributed by RPO. See special report submitted
with reorganization of this line. Force justified, Augusta, Ga. to Douglas, Ga. and
return. Separations in line with quantity of mail distributed. Recommendation made
for RPO service, Augusta to Douglas instead of Augusta to Valdosta, and closed pouch service
Douglas to Valdosta.

vice, Douglas, Ga.,
superseded by CP service,
Douglas to Valdosta, Ga.,
and return, daily except Sunday

- (2) In accordance with your Joint Letter of September 8, 1937, in regard to minimum pay routes and mixed train service, recommendation on the Augusta & Madison RPO line is herewith submitted.
- (3) The Augusta & Madison RPO is on the main line of the Georgia & Florida Railroad, consisting of Route 104781, Valdosta to Augusta, Ga., and return. Total mileage, 222.90 miles. The Space earnings of the 15 ft. RPO unit used on this line between Valdosta and Augusta, Ga. an return, is \$23593.96 per annum, for seven round trips per week. The apartment car accommodates all the mails handled on each trip.
- (4) An inspection was made in train 4, May 18th, and train 5, May 19th. Copy of Inspection Report for both trains attached hereto. In train 4 leaving Valdosta there was only one pouch received, no storage mail nor sacks for distribution. There was only 10 pouches opened between Valdosta and Hazlehurst, there being 25 letter packages and one sack of papers for distribution, the major portion of which was received between Douglas and Hazlehurst, Ga. In train 5 from Hazlehurst to Valdosta there were only 9 pouches received and distribution was made of 25 letter packages and one sack, the major portion of which was received and handled between Hazlehurst and Douglas, Ga.
- (5) It is proposed to discontinue RPO service between Valdosta and Douglas, Ga. to be superseded by closed pouch service. Consideration was given the matter of establishing a Star Route to supersede the RPO service between Douglas and Valdosta, Ga., but as there is no passable road to cover all offices involved, it was not considered feasible to have a Star Route between these points.

JHB:L

6-21-39

193

JUN 21 1939

193

(Approved)

JHB
Chief Clerk
E. J. Adams
Acting Superintendent

(Approved)

193

General Superintendent

(Initialed)

193

Second Assistant

Form 5217
 Rev. April 1938

(See Note 1)

REPORT OF R. P. O. INSPECTION

 (REQUIRED)
 (SPECIAL)

 Inspection of **Augusta & Madison**
 on **Thursday** **May 18,** 19**39**, between **Valdosta and Augusta, Ga.**

R. P. O. train

(Class

A

JUN

21

1939

MAIL DISTRIBUTED THIS TRIP

Advance (in to)	Miles (see note 4)	Number of nonstop offices served	Number of local exchanges		Pouches opened (Note 4)	Letters (packages)	Papers (stacks)	Registers (pieces)	Number clerks on duty	Total clerks' hours	Per cent per hour	Total hours employed
			H	D								
9.55 A. M. to 10.20 A. M.					0	0	0	0	1	.25	0	0.00
Valdosta to Hazlehurst	94	1	8	8	10	25	1	1	1	3.07	16	1.00
Hazlehurst to Augusta	129	5	18	18	25	55	9	14	1	5.13	26	0.00
TOTAL FOR TRIP	223	6	26	26	37	80	10	15	x x	8.45	22	1 hr.

DISTRIBUTION BY DAYS OF WEEK

4

weeks ending **May 31, 1939**

(See Note 4)

Day of Week	CLERICAL FORCE (From current Form 5217)					AVERAGE MAIL WORKED						UNWORKED MAIL (Explain under remarks)			
	CREW		CLERKS' HOURS (Except unloading)			Pouches opened	Letters (pkgs)	Papers (stacks)	Regis- ters (pieces)	Total accom- plishment	Average per clerk per hour (no fractions)	Num- ber times	LETTERS		Papers (stacks)
	Through clerks	Helpers	Ad- vance	En route	Total								Pouches	Pack- ages	
Sunday	1	0	.25	8.20	8.45	14	42	5	3	87	10				
Monday	1	0	"	"	"	35	82	8	13	183	21				
Tuesday	1	0	"	"	"	36	84	10	14	193	22				
Wednesday	1	0	"	"	"	34	84	11	13	192	22	None			
Thursday	1	0	"	"	"	35	80	12	13	193	22				
Friday	1	0	"	"	"	35	85	15	12	206	24				
Saturday	1	0	"	"	"	35	75	11	8	182	21				

SPACE USED IN AUTHORIZED DISTRIBUTING UNIT Frequency

CAR No. 546

DISTRIBUTING UNIT

STORAGE

DISTRIBUTION SEPARATIONS USED AND NEEDED

5. DISTRIBUTION PERFORMED THIS TRIP. (If a State is made up No. 1, 2, etc., show each subdivision. If distribution of State or city—or long or short letters—requires two or more cases, show each case, also indicate frequency required city distribution. Designate accommodation distribution by "@" Distribution which can be deferred on basis of space needed, as "D". Explain excessive separations.)

State line or city	Pouches	Packages	Sep.	Sacks	Sep.	Registers	State line or city	Pouches	Packages	Sep.	Sacks	Sep.	Registers
Mixed	37		20	1									
Mixed		18	30										
Georgia		60	52	9	20								
S. Carolina		2	7										

421111
111111
vs.
UNITED STATES
DEFENDANT'S EX. NO. 7
Draper Reporting Company

6. Name of clerk in charge **W.S. Ware** Character of supervision **One man run**
 7. Are badges and revolvers worn on duty as required? **Yes** 8. Are necessary corrected schemes and schedules carried? **Yes**
 9. Commissions, condition of **Good** 10. Are registers handled according to regulations? **Yes**
 Are official diagrams followed? **Yes** Date of last approved diagram **August 10, 1937**
 Are errors checked and irregularities reported? **Yes** Number errors checked this trip
 13. Is any change in organization needed? **Yes, see recommendation** 14. Is any relief in force necessary? **No**
 15. Can any economy in organization be effected? **Yes, see recommendation** The complementary train number is **5**
 16. Is advance period sufficient or excessive? **Sufficient** Average unloading credit needed this trip? **5 min.**
 17. State if working packages and sacks are large, small, or average. Packages **Small** Sacks **Small**
 18. Last previous complete inspection **April 8, 1937** between **Valdosta and Augusta**
 19. Last previous partial inspection **No record** between
 20. REMARKS: **Conditions regular. No mails unworked or carried by. All available mails loaded at all points. Sunday service necessary as service between Valdosta and Douglas will be closed pouch and will be distributed by RPO. See special report submitted with reorganization of this line. Force justified between Douglas and Augusta. Separations in line with quantity of mail distributed. Recommendation made for RPO service between**

Tuesday	1	0	"	"	"	30	80	19	5	199	22
Wednesday	1	0	"	"	"	31	84	20	10	211	23
Thursday	1	0	"	"	"	33	87	22	12	225	25
Friday	1	0	"	"	"	31	87	23	10	223	24
Saturday	1	0	"	"	"	31	88	21	10	218	24

NON

NN

3. SPACE USED IN AUTHORIZED DISTRIBUTING UNIT Frequency A CAR No. 546

LEAVING (See note 5)	DIST. UNIT		STORAGE			Stor age bags in car used car case note	DISTRIBUTION SEPARATIONS USED AND NEEDED													
	Furn.	Anth.	SPACE USED		Vac ant space (Show how made)		LEAVE SEPARATIONS		BACK IN USE						TOTAL BACK IN SEPARATIONS					
			Work ing bags	Stor age bags			Used	Max avail able of this type	Used		Not used		Not used		Bags in use	Used			Max avail able of this type	
									Num. bags used	Per cent used	Num. bags used	Per cent used	Num. bags used	Per cent used		Int lers	Pa pers	Total		
Augusta	30	15	0	22	67	65	65	1	12					15	12	15	27	27		
Hazlehurst	30	15	0	20	65	55	55	1	12					12	16	8	24	24		

4. STORAGE UNITS AUTHORIZED THIS TRIP

Reg. Unit	Between	Reg. Unit	Between	Reg. Unit	Between
None					



*Note.—Show sacks in vacant space, then show (per 4) percentage used after adding bags in oversize car and deducting vacant space in authorized distributing unit. Show all return units authorized in train and whether paid for, thus—BY RMP (return movement, paid) or V DUN (disallowed, no pay). No mail to be shown in oversize car until authorized distributing unit filled.

- A. Was proper attention given to the most economical use of distributing and storage space? **Yes**
- B. Can any economy in space be effected? **Yes, see recommendation**
- C. Was car congested so as to endanger safety of clerks or mail? **No** Any relief in space necessary? **No**
- D. If so, state under "Remarks" action taken **None** E. Are RMP units stated in most economical manner? **None**

8-11500

19. Last previous partial inspection No record between
20. REMARKS: Conditions regular. No mails unworked or carried by. All available
mails loaded at all points. Sunday service necessary as service between Valdosta and
Douglas will be closed pouch and will be distributed by RPO. See special report submitted
with reorganization of this line. Force justified, Augusta, Ga. to Douglas, Ga. and
return. Separations in line with quantity of mail distributed. Recommendation made
for RPO service, Augusta to Douglas instead of Augusta to Valdosta, and closed pouch service
Douglas to Valdosta.

6-20-39

(Date submitted)

W. C. Roney
~~XXXXXXXXXX~~ Assistant Chief Clerk, Dist. No.

JUN 22 1939

C. L. Adams
(Signature of Superintendent)

INSTRUCTIONS.—1. A report on this form must be submitted for each complete inspection, each special inspection ordered, and for each distributing car in train. Erase either "Required" or "Special."

2. Special attention should be given to the routing of mails and to errors in distribution. The answer to question 12 should be based on the Chief Clerk's personal investigation on the trip.

3. Under section "1" make a separate entry for each portion of the line in which there is a material variation in the amount of distribution, and for a lay-over of 1 hour or more. Give data for two or more subdivisions according to length of the line except small "a" lines. Number of nonstop offices served should be included in number of local exchanges and pouches received combined under "Pouches opened."

The total for the trip on last line should correspond with the count on trip report. The data as to clerks hours, etc., is to be based on current Form 5084.

4. Under section "2" use data from Form 5210 for previous 4 weeks, except do not use December data and for inspections made in January use January data. If new organization, use 2, 3, or 4 weeks relating thereto.

5. Under section "3" list in column 1 the points at which the number of separations is materially increased or reduced and where authorization changes. Special attention should be given to diagrams of letter, pouch, and paper cars, and the elimination of unnecessary make-ups.

6. Submit a separate recommendation for any necessary change in space or organization incidental to the inspection.

7. Under heading, "20. Remarks" give any further information or data which should be considered, and state definitely whether or not you consider the clerical force in the train fully justified on every day of the week, and the necessity for Sunday service.

8. Under sections "1" and "2" the distribution will be converted into accomplishments on the following basis: Pouch opened (including registered) 2; letter package 1; paper sack 3; register one-half.

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*Defendant's Exhibit No. 21**March 11, 1935. R.P.O. Train 5 between Augusta and Valdosta.*

- (16) REMARKS: Clerical force considered justified every day in the week. Unemployed time result of mixed train and slow schedule. Has connections for receipt and dispatch of mail at six intermediate junction points. Sunday service is necessary principally for supply of local offices having no other supply on that day.

March 15, 1935. R.P.O. Train 1 between Valdosta and Augusta.

- (16) REMARKS: Clerical force considered fully justified every day in the week. Slow schedule, but essential local service is performed with connections at five intermediate junction points for receipt and dispatch of mails. Sunday service not necessary in this train but is in the complementary train.

April 7, 1937. R.P.O. Train 5 Between Augusta and Valdosta.

- (16) REMARKS: Service with clerk is justified every day in the week, on account of local offices served and necessary dispatches of mail at six intermediate junction points. No congestion in mail car and no relief in space or force necessary.

April 8, 1937. R.P.O. Train 1 between Valdosta and Augusta.

- (16) REMARKS: Service with clerk justified every day in the week except Sunday. No saving is possible as space and clerk is necessary on that day in Train 5. No congestion in mail car and no relief in force or space necessary.

268

Defendant's Exhibit No. 21

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Y

(pencil note)

JDH

The change from RPO to CP between Douglas and Valdosta is an economy proposition only and it is a question of Dept. policy as to whether the change should be approved.

WLM

18. Last previous complete inspection.....
19. Last previous partial inspection..... No record..... between.....
20. REMARKS: Conditions regular. No mails unworked or carried by. All available mails loaded at all points. Sunday service necessary as service between Valdosta and Douglas will be closed pouch and will be distributed by RPO. See special report submitted with reorganization of this line. Force justified between Douglas and Augusta. Separations in line with quantity of mail distributed. Recommendation made for RPO service between Douglas, Ga. and Augusta, Ga. and closed pouch service between Douglas and Valdosta, Ga.

June 20, 1939

(Date submitted)

Fred J. Hickey
Assistant Chief Clerk, Dist. No. 8

C. S. Adams
(Signature of Superintendent)

INSTRUCTIONS.—1. A report on this form must be submitted for each complete inspection, each special inspection ordered, and for each distributing car in train. Erase either "Required" or "Special."

2. Special attention should be given to the routing of mails and to errors in distribution. The answer to question 12 should be based on the Chief Clerk's personal investigation on the trip.

3. Under section "1" make a separate entry for each portion of the line in which there is a material variation in the amount of distribution, and for a lay-over of 1 hour or more. Give data for two or more subdivisions according to length of the line except small "a" lines. Number of nonstop offices served should be included in number of local exchanges and pouches received combined under "Pouches opened."

The total for the trip on last line should correspond with the count on trip report. The data as to clerks hours, etc., is to be based on current Form 2084.

4. Under section "2" use data from Form 5219 for previous 4 weeks, except do not use December data and for inspections made in January use January data. If new organization, use 2, 3, or 4 weeks relating thereto.

5. Under section "3" list in column 1 the points at which the number of separations is materially increased or reduced and where authorization changes. Special attention should be given to diagrams of letter, pouch, and paper cases, and the elimination of unnecessary make-ups.

6. Submit a separate recommendation for any necessary change in space or organization incidental to the inspection.

7. Under heading, "20. Remarks" give any further information or data which should be considered, and state definitely whether or not you consider the clerical force in the train fully justified on every day of the week, and the necessity for Sunday service.

8. Under sections "1" and "2" the distribution will be converted into accomplishments on the following basis: Pouch opened (including registered) 2; letter package 1; paper sack 3; register one-half.

4 Div. also recommended 14.39 discount of CP Service on Trs 17 & 18 1947 Valdosta Ga & Madison Fla to be superseded by Star Rt Service.

(further pencilled notation).

Advise 4th that no action will be taken on this recommendation at this time

JDH

7/3

269

Defendant's Exhibit No. 25

COPY

Ry: H H-A
July 5, 1939

The Superintendent R. M. S.
Atlanta, Ga.

Careful consideration has been given your recommendation for the continuance of RPO service in the August & Madison RPO between Douglas and Valdosta, Ga.

While there is undoubtedly some merit in your recommendation, we feel that in view of the vigorous protest made in connection with proposed discontinuance of C.P. service between Valdosta, Ga., and Madison, Fla., this matter should be held in abeyance until such time as the railroad company might voluntarily withdraw or curtail some of this train service. Therefore, your recommendation of June 21 is not approved.

/s/ J. D. HARDY
General Superintendent

270 *Order Settling and Approving Transcript of
Record on Cross-Petition for Certiorari*

The plaintiff having presented to the court the within transcript from the original record of the court in the above-entitled case as a portion of the record material to the errors assigned in its application for record on cross-petition for certiorari; in addition to the portions of the record designated by the defendant, the court upon consideration thereof finds the transcript to be an accurate statement of such portions of the original record and that it is material to the errors assigned, and orders the same this third day of August, A. D. 1948, Settled and Approved.

BY THE COURT,
SAMUEL E. WHITEKER,
Acting Chief Justice.

271 In the Supreme Court of the United States
October Term, 1948
No. 135
(Title Omitted)

Stipulation as to be Printed Record

Filed Aug. 31, 1948

It is hereby stipulated by and between counsel for the respective parties in the above entitled cause that, with the exception of Sheet 1, all of Defendant's Exhibit 3 be omitted from the printed record.

PHILIP B. PERLMAN,

PHILIP B. PERLMAN,
Solicitor General.

MOULTRIE HITT,

MOULTRIE HITT,
Counsel for Respondents.

Dated: August 31, 1948

273 In the Supreme Court of the United States
October Term, 1948
No. 198
(Title Omitted)

Stipulation as to Printed Record

Filed Aug. 31, 1948

It is hereby stipulated between counsel for the respective parties that all of Defendant's Exhibit 23, consisting of copies of R.P.O. Inspection Reports, be omitted from the printed report with the exception of the following extracts therefrom:

March 14, 1935: R.P.O. Train 5 between Augusta and Valdosta.

(16) REMARKS: Clerical force considered justified every day in the week. Unemployed time result of mixed train and slow schedule. Has connections for receipt and dispatch of mail at six intermediate junction points. Sunday service is necessary principally for supply of local offices having no other supply on that day.

March 15, 1935: R.P.O. Train 4 between Valdosta and Augusta.

(16) REMARKS: Clerical force considered fully justified every day in the week. Slow schedule but essential local service is performed with connections at five intermediate junction points for receipt and dispatch of mails.

Sunday service not necessary in this train but is in the complementary train.

274 April 7, 1937. R.P.O. Train 3 between ~~Duquoin~~ and Valhalla.

(16) REMARKS: Service with clerk is justified every day in the week, on account of local offices served and necessary dispatches of mail at six intermediate junction points. No congestion in mail car and no relief in space or force necessary.

April 8, 1937. R.P.O. Train 4 between Valhalla and Augusta.

(16) REMARKS: Service with clerk justified every day in the week except Sunday. No saving is possible as space and clerk is necessary on that day in Train 5. No congestion in mail car and no relief in force or space necessary.

MOULTRIE HITT,

MOULTRIE HITT,

Attorney for Petitioner,

Alfred M. Jones, Receiver for

Georgia & Florida Railroad,

604 Tower Building,

Washington 5, D. C.

PHILIP B. PERLMAN,

PHILIP B. PERLMAN,

Solicitor General.

August 31, 1948.

276 SUPREME COURT OF THE UNITED STATES

No., October Term, 1948.

WILLIAM V. GRIFFIN and HUGH WILLIAM PURVIS, Receivers
for the GEORGIA AND FLORIDA RAILROAD, PETITIONERS.

v.

THE UNITED STATES.

*Order Extending Time Within Which to File Petition for
Certiorari*

UPON CONSIDERATION of the application of counsel for the petitioners,

IT IS ORDERED that the time for filing a petition for certiorari in the above entitled cause be, and the same is hereby, extended to and including July 1st, 1948.

FRED M. VINSON,

Chief Justice of the United States.

Dated this 29th day of June, 1948.

277 SUPREME COURT OF THE UNITED STATES.

*No. 100,000, October Term, 1948.*ALFRED W. JONES, Receiver for Georgia and Florida
RAILROAD, PETITIONER,

VS.

THE UNITED STATES.

*Order Extending Time to File Petition for Writ of
Certiorari*UPON CONSIDERATION of the application of counsel
for the petitioner,IT IS ORDERED that the time for filing petition for writ
of certiorari in the above-entitled cause be, and the same is
hereby, extended to and including August 11, 1948.

FRED M. VINSON,

Chief Justice of the United States.

Dated this 13th day of July, 1948.



[fol. 278] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1948

No. 135

THE UNITED STATES, Petitioner,

vs.

ALFRED W. JONES, Receiver for Georgia & Florida Railroad

ORDER ALLOWING CERTIORARI—Filed December 6, 1948

The petition herein for a writ of certiorari to the Court of Claims is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 279] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1948

No. 198

ALFRED W. JONES, Receiver for Georgia & Florida Railroad,
Petitioner,

vs.

THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 6, 1948

The petition herein for a writ of certiorari to the Court of Claims is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.